Division 2. Agricultural Labor Relations Board

Chapter 1. Definitions

§20100. Terms Defined in Labor Code Section 1140.4.

The terms "agriculture," "agricultural employee," or "employee," "agricultural employer," "person," "representative," "labor organization," "unfair labor practice," "labor dispute," and "supervisor" as used herein shall have the meanings set forth in Labor Code Section 1140.4.

§20105. Act; Board; Board Agent.

The term "Act" as used herein shall mean the Agricultural Labor Relations Act. The term "Board" shall mean the Agricultural Labor Relations Board and shall include any group of three or more members designated pursuant to Labor Code Sec. 1146. The term "Board agent" shall mean any member, agent, or agency of the Board, including its general counsel.

§20106. Contents of Authorization cards.

Repealed.

§20107. Executive Secretary.

The term "executive secretary" shall mean the executive secretary appointed pursuant to Labor Code Section 1145.

§20110. General Counsel.

The term "general counsel" as used herein shall mean the general counsel under Labor Code Section 1149.

§20115. Region

The term "region" as used herein shall mean that part of the State of California fixed by the Board as a particular region.

§20120. Regional Director

The term "regional director" as used herein shall mean the agent designated as the regional director in charge of a particular region, and shall also include any person designated as acting regional director.

§20125. Administrative Law Judge; Investigative Hearing Examiner.

(a) When used herein, the term "administrative law judge" shall refer to the agent of the Board conducting hearings pursuant to Chapters 4 and 6 of the Act or under Chapter 5 of the Act when consolidated with a hearing under Chapter 4 or 6. The term shall include the Board or a member of the Board when conducting a hearing pursuant to Chapters 4 and 6 of the Act or under Chapter 5 of the Act when consolidated with a hearing under Chapter 4 or 6.

(b) When used herein, the term "investigative hearing examiner" shall refer to the agent of the Board appointed by the executive secretary to conduct hearings pursuant to Chapter 5 of the Act.

§20130. Party.

The term "party" as used herein shall mean any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the Act, any person named as respondent, as employer, or as party to a contract in any proceeding under the Act, and any labor organization alleged to be dominated, assisted, or supported in violation of Labor Code Section 1153(a) or (b); but nothing herein shall be construed to prevent the Board or its designated agent from limiting any party's participation in the proceedings to the extent of its interest only.

Chapter 1.5. General Rules of Pleading and Practice

§20150. Format of Pleadings and Papers.

All papers filed with the Board shall be on white paper, 8 1/2 inches wide by 11 inches long, which shall be of at least 18 pound bond weight. Matter shall be presented by typewriting, not less than 12 point or at least as large as pica type printing or other clearly legible reproduction process, and shall appear on one side of each sheet only. All documents filed with the Board shall identify and be signed by the party or representative filing the document, contain the sender's address and telephone number, and designate the title of the case, including any case number assigned by the Board. All documents filed with the Board shall be prepared with space and a half or double spacing, except for the identification of party or representative, the title of case, footnotes, and quotations. ALRB forms and petitions may be completed by hand, provided the handwriting is legible. Handwritten declarations will be accepted where it would be unduly difficult to provide typewritten ones. Whenever declarations which are not in English are presented for filing and service, they shall, whenever possible, be accompanied by a proposed English translation.

§20155. Signing of Petitions, Pleadings, Motions, Applications, Requests, Responses, Briefs and Other Papers.

Every pleading, petition, motion, application, request, response, brief, or other paper filed with the Board and every request for discovery or particulars and any responses thereto, shall be signed by the attorney or other representative of the party, or, if the party is not represented, it shall be signed by the party or by one of its officers or partners. The signature of the attorney, other representative, party, officer or partner constitutes a certification by the signer that he or she has read the petition, pleading, motion, application, request, response, brief, or other paper, that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§20160. Place of Filing and Number of Copies to be Filed.

(a) Papers presented for consideration by the executive secretary, an administrative law judge, an investigative hearing examiner or the Board itself shall be filed in the offices of the Agricultural Labor Relations Board in Sacramento. A party shall submit an original and six (6) copies of all papers other than hearing exhibits.

(b) Papers presented for consideration by the general counsel shall be filed in the office of the general counsel in Sacramento. A party shall submit an original and two (2) copies.

(c) Papers which these regulations require to be filed at a regional office shall be filed in the regional office having jurisdiction of the matter. A party shall submit an original and two (2) copies.

§20162. Appearance Before the Board.

To facilitate the service of papers upon the parties and their attorneys or representatives, the executive secretary shall maintain an appearance list containing the name, address and telephone number for each attorney or representative of a party and for each unrepresented party, and shall make this information available upon request. Accordingly, each party, attorney, or representative of record, shall either (i) include his or her address and telephone number on the initial pleading he or she files with the Board or the executive secretary and serves on the other parties and the appropriate regional office or (ii) file with the executive secretary and serve on the other parties and the appropriate regional office a notice of appearance containing his or her address and telephone number. The attorney or representative of a party or any unrepresented party shall immediately notify the executive secretary and the other parties of any change of address or telephone number.

§20164. Service of Papers by the Board or on the Board.

All papers filed by the Board or any of its agents shall be served, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party either (i) personally, by leaving a copy at the principal office, place of business, or, if none, at the residence of the person(s) required to be served, or (ii) by registered or certified mail, with return receipt requested, addressed to the principal office, place of business or, if none, to the residence of the person(s) required to be served, together with an appropriate proof of service. All papers filed by a party with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, may be filed in accordance with any of the methods prescribed above with a certificate of mailing, or by deposit with a common carrier promising overnight delivery.

Service need only be made at one address of a party, or attorney or representative of a party and only to one attorney or representative of each party. Service shall be established by a written declaration under penalty of perjury, setting forth the name and address of each party, attorney or representative served and the date and manner of their service. The Board or the party shall retain the original proof of service.

§20166. Service on Others of Papers Filed with the Board.

Whenever a party files papers with the Board, the executive secretary, an administrative law judge, an investigative hearing examiner, any regional office of the Board, or the general counsel, it shall serve the same, together with a copy of a proof of service, on the attorney or representative of each party and on each unrepresented party in the same manner as set forth in section 20164, with the exception of an unfair labor practice charge, which, in accordance with section 20206, must be served personally or by a method that includes a return receipt. Service need only be made at one address of an unrepresented party or an attorney or representative of a party and to only one attorney or representative of each party.

(a) Service on other parties shall be made prior to, or simultaneously with, the filing with the Board, and proof of such service shall be attached to the papers when filed with the Board. Service shall be proven by means of written declaration signed under penalty of perjury, setting forth the name and address of each unrepresented party, attorney or representative of a party served and the date and manner of service.

(b) No proof of service will be required when papers are served by one party on another at the hearing when the fact of such service is stated on the record and in the presence of the party being served, or his or her attorney or representative of record.

§20168. Provisions for Use of Facsimile Machines and Expedited Service.

(a) In lieu of the methods of service provided for above, the Board or any of its agents may serve papers on parties and parties may file papers with the Board or any of its agents and

serve them upon other parties by means of facsimile ["FAX"] machine under the following conditions:

(1) The total length of the document(s) to be filed and/or served at any one time is no more than fifteen (15) pages. This means multiple documents concerned with the same matter--for example, a motion, supporting declarations, points and authorities, and proof of service--are to be considered together in computing the fifteen (15) page limit.

(2) The format and content of the document transmitted shall comply with section 20150 and the specific requirements of any other section of these regulations applicable to the particular matter involved.

(3) Each document so transmitted shall contain the FAX number of the sender and the sender's telephone number.

(4) For a document to be considered received on the day in question, transmission must have begun prior to 4:00 p.m. on that date.

(5) As soon as possible after transmission, but no later than 5:00 p.m. on the next business day, the sending party shall file the original and the required number of copies with the Board and serve copies on each party in the manner provided for in section 20166, and shall provide a proof of service to that effect. Where service is effected by the Board, copies shall be served on each party in the manner provided in section 20164 along with proof of service to that effect.

(b) To the extent possible, all other parties will be served by FAX with any document filed by FAX, and the FAX transmission shall include a proof of service indicating the method of service on each party. For those parties who cannot be served by FAX, some other expedited form--mailgram, telegraph, overnight mail--may be utilized and the FAX proof of service shall so indicate. Parties filing papers who do not have an available FAX machine may file with Board and serve copies on the other parties by one of the expedited methods described above, and shall so indicate on their proof of service.

(c) The unexcused failure to comply with the above conditions shall be grounds for striking or refusing to consider the FAXed document(s) involved.

(d) In order to facilitate prompt processing and consideration of filings, the Executive Secretary may require that filings by facsimile transmission.

§20170. Computation of Time Periods.

(a) The date of service shall be the day when the matter served is deposited in the mail, delivered in person, or transmitted pursuant to section 20168 of these regulations.

(b) In computing time periods prescribed by these rules, the day of the mailing or other event which starts the time period running is not counted. The last day of the time period is included unless it falls on a Saturday, Sunday or a State or Federal legal holiday as defined in Government Code Section 6700, in which case the time period expires on the next business day. Where a time period prescribed is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation. Whenever a time period begins to run from the time of service of a document on a party and such service is made by mail, three days shall be added to the prescribed period for response.

(c) Except as provided in section 20168(a)(5), documents required to be filed with the Board must be received by the Board by 5:00 p.m. on the last day of the time period unless mailed by registered or certified mail postmarked by that last day or deposited by the last day with a common carrier promising overnight delivery.

(d) In case of fax transmission, the time period shall begin to run upon service of the document in the manner provided for in section 20168(a)(5).

§20180. Exceptions to General Provisions Regarding Format, Service, Copies and Time Periods Prevail.

(a) Whenever provisions of this Chapter 1.5 conflict with provisions regarding format, service, copies, or computation of time periods which appear elsewhere in these regulations, the other provisions shall prevail.

(b) When application of the provisions of Chapter 1.5 would work an injustice or hardship on the parties, deviations from this Chapter 1.5 may be permitted by the executive secretary.

§20190. Continuance of Hearing Dates.

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference will be finalized unless the executive secretary receives a written communication within ten (10) days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or prehearing is mutually agreed to and communicated to the executive secretary within the ten day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or prehearing, the objecting party may submit a written request to the executive secretary within the ten day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or prehearing in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing three additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and prehearing and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to two working days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. Requests for continuances for periods longer than two working days shall be in writing directed to the executive secretary with proof of service on all parties. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for continuance, all matters relevant to a proper determination of the motions will be taken into consideration, including:

(1) The official case file and any supporting declaration submitted with the motion.

(2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.

(3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.

(4) The proximity of the hearing date.

(5) The condition of the hearing calendar.

(6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.

(7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.

(8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

(1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.

(2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.

(3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.

(4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which that counsel did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may

proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

§20192. Extensions of Time.

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, the grounds for the extension, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2) above.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

§20194. Requests to Shorten Time.

(a) Circumstances occur from time to time when parties desire to shorten the time for complying with the time limits contained in these regulations or in orders of the Board, the executive secretary, an administrative law judge, or an investigative hearing examiner for the filing and service of papers or for the commencement of hearings and prehearings. For good cause shown, parties or counsel may apply for an order shortening time to the executive secretary or the assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, by written motion, with service on all other parties.

(b) Requests to shorten time shall be filed or presented in the same manner as motions for continuances. The request shall include the time limit then in effect, the change sought in that time limit, the grounds for shortening time, and the position of the other parties, in the same manner as required for continuances in subsection 20190(c)(2).

(c) Requests to shorten time will be processed in the same manner as continuances, and they will be ruled upon utilizing considerations similar to those described in the guidelines for continuances found in subsections 20190(e), (f) & (g).

§20196. General Provisions Applicable to Continuances and Extensions of Time.

(a) The executive secretary may designate member(s) of the Board staff to assist in performing the executive secretary's functions with respect to continuances, extensions and shortening of time.

(b) The failure of a moving party to cooperate with the executive secretary or a representative of the executive secretary, or the assigned administrative law judge, in determining whether circumstances exist warranting a continuance or extension of time will be grounds for denial of the motion.

(c) False or misleading statements in motions or in contacts with the executive secretary, or a representative of the executive secretary, or the assigned administrative law judge, in connection with a continuance, extension, or a request to shorten time may subject a party to adverse action under section 20800.

Chapter 2. Unfair Labor Practice Regulations

§20200. Non-Prejudicial Error.

The Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not substantially affect the rights of the parties.

§20201. Charge.

Any person may file a charge that any person has engaged in or is engaging in an unfair labor practice.

§20202. Form and Contents of Charge.

The charge must be in writing and contain the following:

(a) The name, address, and telephone number of the person or organization making the charge.

(b) The name, address, and telephone number (if available) of the person, organization, or company against whom the charge is made.

(c) A short statement of the facts allegedly constituting a charge.

(d) The charging party may submit declarations, signed under penalty of perjury, in support of the charge. Such declarations shall remain confidential, except as provided in section 20274(a).

(e) Proof of service of the charge on the charged party pursuant to the provisions of section 20206.

(f) The charge shall be signed y the Charging Party below the following statement: "I declare that I have read the above charge and the statements contained therein are true to the best of my knowledge and belief.

§20204. Forms.

Repealed.

§20205. Number of Copies.

Repealed.

§20206. Service.

An unfair labor practice charge must be served on the charged party as provided in sections 20160 and 20166. As a courtesy, the regional director shall offer to serve the charge or amendment, on the charged party. In making such an offer or in serving the charge or amendment upon the charged party, the regional director shall not be deemed to have assumed the legal responsibility for timely and proper service. If the charging party shall, in addition to filing a proof of service with the charge, file the return receipt with the regional director no later than the date of the issuance of the complaint.

§20208. Where Filed.

A charge shall be filed in the regional office in the region where the alleged unfair labor practice occurred or is occurring, unless otherwise directed by the general counsel.

§20210. Amendment of Charge.

An amendment to a charge must be in writing and contain the same information as a charge. An amended charge must refer, by original case number, to the charge to which it is related, and must be filed and served in accordance with the provisions of sections 20160, 20166, and 20208.

§20212. Withdrawal of Charge.

The charging party may withdraw a charge with the written consent of the regional director who shall serve written notice of said withdrawal upon all other parties pursuant to section 20164.

§20213. Investigation of Charge; Declarations by Charging Party.

Repealed.

§20216. Investigation by Regional Director.

The regional director shall investigate to determine whether or not there is reasonable cause to believe that an unfair labor practice has been committed.

§20217. Investigative Subpoenas.

(a) For purposes of investigation, the general counsel or his or her agents may issue and serve subpoenas requiring the production by persons at the respondent's place of business, or such other location as mutually agreed to by the respondent and the regional director, of any materials, including but not limited to books, records, correspondence or documents in their possession or under their control.

(b) The subpoena shall show on its face the name, address, and telephone number of the general counsel or his or her agent who has issued the subpoena. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum, showing good cause for the production of the matters and things described in such subpoena. The declaration shall show specific facts justifying discovery and that the materials are relevant to the subject matter of the investigation or reasonably calculated to lead to the discovery of admissible evidence.

(c) Service of subpoenas shall be made pursuant to Labor Code Section 1151.4(a) or by certified mail. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(d) Any person on whom an investigative subpoena is served who does not intend to comply shall, within five days after the date of service, petition in writing to revoke the subpoena. Such petition shall explain with particularity the grounds for objecting to each item covered by the petition. The petition to revoke shall be served upon the general counsel or his or her agent who issued the subpoena. The petition to revoke shall be filed with the executive secretary.

(e) The executive secretary shall revoke the subpoena if the materials required to be produced do not relate to any matter under investigation, or the subpoena does not describe with sufficient particularity the materials whose production is required, or the testimony or records sought are privileged or confidential or deal with a matter not subject to review, or the subpoena is otherwise invalid. A simple statement of the grounds for the ruling on the petition shall accompany the ruling. Adverse rulings may be appealed to the Board through the procedures outlined in section 20242.

(f) When a person under subpoena refuses to produce the requested information on the basis of his or her privilege against self-incrimination, the general counsel or his or her agents may file a written request that the Board grant immunity and compel that person to produce the requested materials. Said request shall otherwise conform and be processed according to section 20251; however, the Board shall rule directly on said request.

(g) Upon any other failure of any person to comply with an investigative subpoena, the general counsel may request that the Board apply to an appropriate superior court for an order requiring compliance in accord with section 20250(k).

§20218. Dismissal of Charge.

If the regional director concludes that there is no reasonable cause to believe that an unfair labor practice has been committed or there is insufficient evidence to support the charge, the charge shall be dismissed in whole or in part. The regional director shall issue a written notice of dismissal stating the reasons for the dismissal and shall serve a copy pursuant to section 20164 on the charging party and on the respondent.

§20219. Review of Dismissals.

Within 10 days of the date of service of a dismissal, the charging party may file a request with the general counsel for review of the decision dismissing the charge. The request for review shall specifically state all reasons why the decision should be reviewed. If the charge was dismissed for lack of evidence, the charging party may provide additional evidence in support of the charge accompanied by a showing of the reasons why such evidence was not previously presented to the regional director. If the charge was dismissed for failure to legally constitute an unfair labor practice, the charging party shall provide legal authority in support of its position that the evidence constitutes an unfair labor practice. The request for review and all supporting documents shall be served upon the charged party and the regional director as provided in section 20166. Within 10 days from the filing of such request, the charged party may file a statement in opposition with service on the charging party as provided in section 20166. Extensions of time to file a request for review or a statement in opposition may be requested in accordance with section 20192, except that such requests shall be directed to and ruled upon by the General Counsel.

The general counsel may request an oral presentation from the parties. The general counsel may affirm the decision of the regional director, remand for further consideration or evidence, or issue a complaint.

§20220. Complaint.

(a) If, after investigation, the general counsel has reason to believe that an unfair labor practice has been committed, he or she shall issue a formal complaint in the name of the Board. The complaint shall contain a statement of the specific facts upon which jurisdiction of the Board is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair labor practice. The statement must include, where known, the dates and places of the conduct and the names of the persons who allegedly committed the acts being charged. The Board may disregard any error or defect in the complaint which does not substantially affect the rights of the parties.

(b) The complaint shall be accompanied by a statement explaining: (1) the requirements for an answer, (2) the right of respondent to a hearing, and (3) the manner in which hearings are scheduled; and it shall also include a copy of sections 20190 and 20192 dealing with continuances and extensions of time and a copy of sections 20235 through 20238 concerning discovery.

§20221. Filing and Service of Complaint.

The complaint shall be filed and served as required by Chapter 1.5.

§20222. Amendment of Complaint; Withdrawal of Complaint.

(a) The general counsel, or his or her agents, may amend any complaint without leave, no later than 10 days prior to the commencement of the hearing. Where there are less than 10 days remaining prior to the opening of the hearing, the complaint may be amended on such terms as may be just upon motion by the general counsel to the assigned administrative law judge. An amendment to a complaint shall be in writing, except that a complaint may be amended orally at hearing or prehearing if the amendment is reduced to writing, filed with the executive secretary and served on the assigned administrative law judge and on all parties no later than 10 days after the close of the prehearing conference or hearing, as the case may be.

(b) The general counsel or his or her agents may withdraw any complaint, without leave, up to 10 days prior to the commencement of the hearing. Thereafter, the complaint may be withdrawn on such terms as may be just upon motion by the general counsel to the assigned administrative law judge.

§20224. Notice of Hearing.

(a) When a case is ready to proceed to hearing, the general counsel will notify the chief administrative law judge, who will cause a notice of hearing to issue, specifying the time and place of hearing. In the alternative, the general counsel may arrange with the chief administrative law judge to include the time and place of hearing in the complaint.

(b) Except where circumstances warrant an expedited hearing, no hearing shall be scheduled to commence less than fifteen (15) days after the issuance of the complaint, and no prehearing conference shall be scheduled to commence less than ten (10) days after the issuance of the complaint.

§20225. Withdrawal, Substitution or Discharge of Attorney or Representative.

An attorney or representative who has made a general appearance for a party in a proceeding governed by this Chapter may withdraw as follows: (a) upon a written consent executed by both the attorney or representative and by the client or the attorney or representative who will substitute into the proceedings which shall be filed with the executive secretary; or (b) by the order of the executive secretary or the Board, if the matter is then pending before it, upon the application of the attorney or representative, or of the client, or of the new attorney or representative, after notice from one to the other. Withdrawal or substitution shall be permitted unless to do so would result in serious prejudice to the other parties to the proceeding. Any application or consent filed pursuant to (a) or (b) above shall contain the address of the client or new attorney or representative for the service of subsequent pleadings and papers. Any application filed pursuant to (b) above shall, without compromising the confidentiality of the attorney-client relationship, if any, state in general terms the reason for the application.

§20230. Answer; Time for Filing.

The respondent shall file an answer within 10 days of the service of the complaint or any amendment to the complaint. If a hearing is set sooner than 10 days after the service of the complaint, the answer shall be filed no later than the day of the hearing. All allegations in amended complaints served after an answer is filed are deemed denied except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

§20232. Contents of Answer.

The answer shall state which facts in the complaint are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. The answer may make any appropriate explanation of the circumstances surrounding the facts set forth in the complaint.

Any allegation not denied shall be considered admitted.

§20234. Filing.

The answer shall be filed with the Executive Secretary and the regional office that issued the complaint. The answer shall be filed and served as required by sections 20160 and 20166. Any requests to extend the time for filing an answer shall be filed with the Executive Secretary pursuant to section 20240.

§20235. Request for Particulars.

Where a complaint lacks specificity as to the time, place or nature of the alleged conduct, or the identity of the persons who engaged in it, or fails sufficiently to identify the individual or group against whom the conduct was specifically directed, a written request for particulars may be made by the respondent in accordance with section 20237 to obtain such information; provided, however, that in responding the general counsel need not disclose the identity of any potential witness whose primary source of income is non-supervisory employment in agriculture.

§20236. Matters Discoverable.

(a) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the names, addresses and any statements (as defined in section 20274(b)) of all witnesses, other than those whose primary source of income is non-supervisory employment in agriculture; provided, however, that any portion of a statement likely to identify a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised.

(b) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the name, address, field of expertise, qualifications, and a brief description of expected testimony of any expert whom it intends to call as a witness. The responding party shall also make available any report prepared for it by such expert concerning the subject matter of the

testimony to be given. The failure, without good cause, to comply with the requirements of this subsection shall be grounds for excluding such expert testimony.

(c) Upon written request, a party to a hearing shall be afforded a reasonable opportunity to examine, inspect and copy, and, where appropriate, to photograph and/or test, any writing or physical evidence in the possession or control of the party to the hearing to whom the request is directed which that party intends to introduce into evidence at hearing; provided, however, that any portion of a writing which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised, except that this proviso shall not apply to otherwise unprotected or unprivileged business records. Where the writing or physical evidence to be introduced is not yet in the possession or control of the responding party, it shall be identified with reasonable specificity.

(d) Upon written request, general counsel shall disclose to respondent any evidence which is purely and clearly exculpatory.

(e) In compliance proceedings, the general counsel shall, upon written request, make available to the requesting party to the hearing all information in its files, which tends to verify, clarify or contradict the items and amounts alleged in the backpay or bargaining makewhole specification unless the information is absolutely privileged, e.g., income tax returns, form W-2 (wage and tax statement), . . . etc.

§20237. Requests for Discovery.

(a) Requests pursuant to sections 20235 and 20236 shall be in writing and directed to the party from whom the information is sought. Copies need not be served on the Board.

(b) Requests shall be made no later than 15 days following service of the answer, and responses shall be due 15 days after receipt of the request; except that, for good cause shown, the chief administrative law judge or the executive secretary, as appropriate in accordance with sections 20240 and 20241, may extend or shorten the time to request or respond.

(c) Requests shall be deemed continuing. Any requested information which becomes available or is discovered after the initial response is to be provided as soon as reasonably possible.

§20238. Orders Compelling Discovery; Sanctions.

(a) A requesting party who believes that the responding party has failed, in whole or part, to comply with a proper request pursuant to sections 20235, 20236, or 20237 may apply in writing to the chief administrative law judge for an order requiring compliance. No application will be entertained unless the applying party establishes that it first made a reasonable effort to resolve the matter by contacting or attempting to contact the responding party. The application shall include copies of the request and any response received, and shall be served on the

responding party. If the responding party desires to oppose the application, he or she shall immediately notify the office of the chief administrative law judge. Depending on the proximity to hearing, the chief administrative law judge shall determine whether the opposition will be written or oral, when it will be due, and whether to assign the matter to an administrative law judge. When the dispute concerns the propriety of excising or failing to turn over a statement containing the name of a potential witness whose primary income is from non-supervisory agricultural employment, the privilege created by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexcised document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of section 20235, 20236, or 20237, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

§20240. Motions Before Prehearing and After Hearing.

(a) With the exception of motions to correct the transcript, all motions made before the prehearing conference or after the close of hearing shall be filed with the executive secretary in accordance with sections 20160 and 20166. Responses shall be filed within seven (7) days after the filing of the motion, or within such time as the executive secretary may direct, as provided in sections 20160 and 20168. No further pleadings shall be filed in support of or in opposition to the motion unless requested by the executive secretary or assigned administrative law judge.

(b) The executive secretary may rule on motions or forward them for ruling to the assigned administrative law judge. The ruling shall be in writing with reasons stated, and shall be served on all parties or, at the discretion of the administrative law judge, it may be incorporated into his or her decision.

§20241. Motions During or After Prehearing Conference and Before Close of Hearing.

(a) With the exception of requests for continuances made prior to the opening of the hearing and requests for continuances in excess of two days made during the hearing, motions and applications made at or after prehearing conference and prior to close of the hearing shall be directed to the assigned administrative law judge, and may be made orally on the record or in writing. If written, the motion, shall be filed and served in accordance with sections 20160 and 20166; provided, however, that a duplicate original shall be filed with the administrative law judge, and, if the hearing is in progress, copies shall be personally served on each party or its representative.

(b) Any party may respond to a written motion orally, at the prehearing conference or hearing, or in writing so long as a response is made within five (5) days after filing of the motion, or such time as the administrative law judge may direct. Written responses shall be served on each party or its representative. No further pleadings shall be filed in support of or in opposition to the motion unless requested by the administrative law judge.

(c) The administrative law judge shall rule on all motions either orally on the record or in writing, as may be appropriate. Rulings shall state the reasons therefor and, if in writing, shall be incorporated in the decision or separately served on all parties or their representatives and on the executive secretary.

(d) The administrative law judge may conduct a telephone conference call among the parties to hear argument or to rule on any motion before him/her. When the conference call method is utilized, upon request of any party, or at the direction of the administrative law judge, the conference call shall be reported or recorded by appropriate means as determined by the administrative law judge, and shall become part of the official record of the proceeding. As an alternative to a telephone conference call, the administrative law judge may utilize any other means of electronic communication which the Board has designated as appropriate.

§20242. Appeals of Executive Secretary and Administrative Law Judge Rulings.

(a) All rulings and orders of every kind, by the executive secretary or by an administrative law judge, shall be a part of the record without the necessity of their being introduced into evidence, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby, as provided in section 20250.

(b) No ruling or order shall be appealable, except upon special permission from the Board; except that a ruling which dismisses a complaint in its entirety shall be reviewable as a matter of right. A party applying for special permission for an interim appeal from any ruling by the executive secretary or an administrative law judge shall, within five (5) days from the ruling, file with the executive secretary, to be forwarded to the Board for review, its application for permission to appeal, setting forth its position on the necessity for interim relief and on the merits of the appeal. The application shall be supported by declarations if the facts are in dispute and by such authorities as the party deems appropriate. Applications and supporting papers shall be filed and served in accordance with sections 20160 and 20166. Any party may file a statement opposing such application, with proof of service on the other parties as provided in sections 20160 and 20166, within such time as the executive secretary may direct. No further pleadings shall be filed in support of or in opposition to the appeal unless requested by the Board through the executive secretary.

(c) Parties intending to apply for special permission to appeal an oral ruling by an administrative law judge shall immediately notify the administrative law judge and arrange with the reporter for an expedited copy of the relevant portion of the hearing transcript which shall be lodged with the Board at the moving party's expense.

(d) Unless the executive secretary so directs, no hearing shall be delayed because an application was filed; nor shall the appeal or attempt to appeal a ruling or order delay the hearing unless the Board so directs.

(e) This section does not apply to decisions of administrative law judges as defined in sections 20279-86.

§20243. Motion for Decision for Lack of Evidence.

(a) After the general counsel or the respondent has completed its presentation of evidence, the opposing party, without waiving its right to offer evidence in support of its defense or in rebuttal in the event the motion is not granted, may move for decision in its favor in whole or in part. The motion shall be granted if the administrative law judge finds that there is no evidence in the record of sufficient substance to support a decision on the merits in favor of the party against whom the motion is directed; provided, that, in making this finding, the administrative law judge shall give to the evidence of said party all value to which it is legally entitled, making every favorable, legitimate inference which may be drawn from that evidence; provided further, that, with respect to the credibility of that party's witnesses, the administrative law judge may disregard such testimony as he or she finds to be manifestly unworthy of belief.

(b) Any ruling granting a motion for decision as to all issues involved in the action shall be in writing with reasons stated and shall be served on all parties and the executive secretary. Any such ruling shall include a recommended order. Such ruling and recommended order is tantamount to an administrative law judge's decision and is reviewable as provided in sections 20279 et seq. or, in the alternative, a party may elect to seek review as provided in section 20242(b).

(c) If the evidence supports the granting of the motion as to some but not all of the issues, the administrative law judge shall grant the motion as to those issues; the administrative law judge's ruling may be made orally or in writing as provided in section 20241(c) and shall be noted in the judge's decision. Such ruling is subject to review under section 20242(b), but special permission is required; such a ruling is also reviewable by way of exception to the administrative law judge's decision pursuant to sections 20279 et seq.

(d) As to any ruling pursuant to this section which is based in whole or in part on a finding that testimony is manifestly unworthy of belief, the administrative law judge shall state, orally or in writing as provided above, the reason(s) for the finding.

§20244. Severance and Consolidation.

(a) Up to ten days prior to the commencement of the hearing, the general counsel may order that several charges be consolidated into one complaint or that several complaints be consolidated for hearing.

(b) Up to ten days prior to the commencement of the hearing, any other party may request the general counsel to consolidate or sever unfair labor practice proceedings.

(c) During the period from less than ten days prior to the commencement of the hearing until the close of hearing, any party, including the general counsel, may file a motion with the administrative law judge to consolidate or sever matters in unfair labor practice proceedings.

(d) After the close of the hearing, consolidation and severance shall be by motion to the Board.

(e) Consolidation of unfair labor practice proceedings with objections proceedings arising under Labor Code Section 1156.3(c) shall be governed by section 20335(c) of these regulations.

§20245. Transfer of Proceedings and Change of Hearing Location.

(a) The general counsel may at any time order that proceedings be transferred from one region to another subject only to the terms of paragraph (b) below.

(b) Once a case has been noticed for hearing at a specified location, any subsequent change in hearing location shall be by written motion to the executive secretary or, if the hearing has commenced, to the assigned administrative law judge.

§20246. Witnesses and Depositions.

Witnesses shall be examined orally under oath, except that after the issuance of a complaint, testimony may be taken by deposition, if the witness will be unavailable for the hearing within the meaning of Evidence Code Section 240, or where the existence of special circumstances makes it desirable in the interest of justice.

(a) Applications to take depositions shall be in writing, and shall set forth the reasons why such depositions should be taken, the name of the witness, the matters about which the witness is expected to testify, and the time and place proposed for the taking of the deposition. Such application shall be served on the opposing party not less than 10 days prior to the time when it is desired that the deposition be taken.

(b) If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner. Depositions so taken may be used to the same extent as depositions taken pursuant to the requirements of this section.

(c) The application shall be made to the executive secretary in triplicate and served pursuant to section 20166 upon the other parties.

(d) The executive secretary may order the deposition taken in the exercise of his or her discretion.

(e) The deposition shall be taken at a time and place and before a person designated by the executive secretary.

(f) The rules governing the manner of taking of depositions shall be the same as those set forth in the Code of Civil Procedure Sections 2016 and following. Where these regulations conflict with the Code of Civil Procedure, these regulations shall govern.

(g) The administrative law judge assigned to preside at the hearing on the complaint shall rule upon the admissibility of the deposition or any part of it. All rulings on objections to the taking of the deposition or any part of it shall be reserved to the administrative law judge at the hearing on the complaint.

§20247. Witness Fees.

Repealed.

§20248. Settlement Conference.

(a) At any time after a complaint has issued, either on his or her own motion or upon written request by any party, the chief administrative law judge may schedule a settlement conference to be held before an administrative law judge other than the one assigned to hear the matter and shall notify the parties, including the charging party, of its time and place. Each party attending such a conference shall be represented by a person fully authorized to engage in negotiations for settlement. Clients or principals shall either attend or be available by telephone.

(b) After assignment of a case to an administrative law judge, he/she may direct that a settlement conference be held in conjunction with any prehearing conference or independently thereof. Upon request by any party, the executive secretary shall assign another administrative law judge to conduct the settlement discussions.

(c) Independently of (a) and (b) above, at any stage of a proceeding prior to hearing, if time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit for consideration by the regional director with whom the charge was filed, facts, arguments, offers of settlement, or proposals of adjustment.

§20249. Prehearing Conference.

(a) Prior to any hearing held pursuant to section 20260, a pre-hearing conference shall be held. The conference shall be conducted by an administrative law judge and shall be attended by the parties or their representatives, who shall be familiar with the case and shall have authority with respect to all matters on the agenda, including settlement.

(b) Prior to the pre-hearing conference the parties shall confer in person or by telephone in an attempt to resolve or define any issues relating to compliance with the provisions of *Giumarra Vineyards,* 3 ALRB No. 21, or with outstanding subpoenas. Where full agreement cannot be reached, they shall agree on such matters as are reasonably susceptible to agreement, and on the time, place and manner of their compliance with such understandings and agreements. In addition, they shall also discuss and attempt to reach agreement on:

(1) Those facts which are not reasonably disputable;

(2) The identification, authentication and/or admissibility of all documents which are to be offered in evidence;

(3) Additional evidence to be subpoenaed if no agreement can be reached for its voluntary exchange;

(4) Anticipated evidentiary issues, including issues of privilege and work product;

(5) A firm estimate of hearing time; and

(6) Amendments, dismissals, consolidations, severances, and transfer.

(c) The agenda for the pre-hearing conference shall include:

(1) A thorough discussion of the issues and positions of the parties, including a careful explanation of the factual and legal theories relied upon. For any theory which is novel or unusual, parties should be prepared, or may be required, to provide the administrative law judge with offers of proof and/or appropriate legal authorities.

(2) Resolution by agreement or ruling on any remaining disputes concerning compliance with the provisions of *Giumarra Vineyards,* 3 ALRB No. 21, and any outstanding subpoenas.

(3) Agreement for the handling of facts not reasonably subject to dispute by stipulation or otherwise.

(4) Discussion and, where possible, resolution of anticipated evidentiary issues, including, insofar as possible, the resolution of issues involving the authentication, admissibility and relevance of documentary and physical evidence. As provided in section 20250(i), witnesses appearing pursuant to subpoenas duces tecum or notices to produce may be sworn and examined for the limited purpose of identifying, authenticating or marking for identification and lodging with the administrative law judge documentary or physical evidence. The parties shall also address themselves to the handling and resolution of anticipated future subpoenas or discovery.

(5) Consideration of issues involving consolidation, severance, transfer, amendment and dismissal.

(6) A firm and mutual estimate of the length of hearing, including any specific scheduling problems and the need for interpreters.

(7) Consideration of utilizing the settlement procedures of section 20248.

(8) Any other matters as may aid in expediting the hearing or contribute to the just, efficient and economical disposition of the case.

(d) The failure to fully and adequately prepare for pre-hearing conference, including the failure to attempt in good faith to confer beforehand, and resolve problems and issues, as provided in (b) above, or failure to comply with a prehearing conference order, shall be grounds for the imposition of such sanctions, inferences or other orders, then or during the hearing, as the administrative law judge may deem appropriate.

(e) The pre-hearing conference may be continued or recessed as may be necessary. At any time after assignment to the case, the administrative law judge may, either on his/her own motion or upon request by a party, conduct a conference among the parties preparatory to the pre-hearing conference by telephone conference call or by any other electronic means which the Board has designated as appropriate; likewise, the administrative law judge may, where appropriate, conduct the initial pre-hearing conference or a continued or recessed pre-hearing conference by telephone conference call or by any other electronic means which the Board has designated as appropriate. When the conference call method is utilized, upon request of any party, or at the direction of the administrative law judge, the conference shall be reported or recorded by appropriate means as determined by the administrative law judge, and shall become part of the official record of the proceeding.

(f) At or after any prehearing conference held pursuant to this section, an order shall be entered reciting the action taken. Absent a showing of good cause for modifying or deviating from the terms of the order, it shall control the subsequent course of the proceeding. It may be served on the parties by FAX, expedited mail or other means as the administrative law judge may determine. Should any party believe the order to be inaccurate or incomplete, that party shall promptly file a motion to correct the order with the administrative law judge as provided in section 20241.

§20250. Issuance of Subpoenas and Notices to Appear or Produce; Petitions to Revoke; Right to Inspect or Copy Data.

(a) Any member of the Board, or the executive secretary, regional director, or any person authorized by the Board, executive secretary or regional director shall upon the ex parte request of any party, prior to hearing, issue subpoenas as provided for in this section requiring the attendance and testimony of witnesses and/or the production of any materials including, but not limited to, books, records, correspondence or documents in their possession or under their

control. Requests for subpoenas during the hearing shall be made to the administrative law judge.

(b) The subpoena shall show on its face the name, address, and telephone number of the party at whose request the subpoena was issued. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum issued before hearing, showing good cause for the production of the matters and things described in such subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness or party has the desired matters or things in his or her possession or under his or her control.

(c) Service of subpoenas shall be made pursuant to sections 20164, 20166, and 20168. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(d) In order to obtain the attendance of a party to the matter, or of anyone who is an officer, director, supervisor, or managing agent of any such party, the service of a subpoena upon any such witness is not required following issuance of a complaint if written notice requesting such witness to attend the hearing of the matter, with the time and place thereof, is served upon the attorney for such party. Such notice shall be served at least 10 days before the time required for attendance unless the Board prescribes a shorter time. The giving of such notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the Board may make and seek such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the Board. The witness shall be entitled to fees as if served pursuant to Labor Code Section 1151.4(a).

(e) If the notice specified in subdivision (d) is served at least 10 days before the time required for attendance, or within such shorter time as the Board may order, it may include a request that such party or person bring books, documents or other things. The notice shall be accompanied by a copy of a declaration under penalty of perjury showing good cause for the production of the matters and things described in such notice, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness or party has the desired matters or things in his or her possession or under his or her control.

(f) Any person on whom a subpoena or a notice to appear (described in subsections (d) and (e)) is served who does not intend to comply shall, within five days after the date of service, petition in writing to revoke the subpoena or notice. Such petition shall explain with particularity the grounds for objecting to each item covered by the petition and shall have attached a copy of the subpoena or notice. The petition to revoke shall be served as provided in sections 20160, 20164, and 20166 by or on behalf of the person seeking revocation upon the party at whose request the subpoena was issued or who issued the notice. If the petition to revoke is filed after the issuance of a complaint but prior to the prehearing conference, the petition shall be filed with the executive secretary. A copy shall be served on the party issuing the subpoena or notice in

compliance with sections 20160, 20164, and 20166. A petition to revoke filed at or after the prehearing conference or during the hearing shall be filed with the administrative law judge who may rule on the matter. If the subpoena has been served less than five days before the hearing, the petition to revoke is due on the first day of the hearing except that the administrative law judge, upon a showing of good cause, may grant up to five days for filing a petition to revoke. For a subpoena issued during the hearing, any petition to revoke shall be due at the time specified in the subpoena for compliance unless further time, up to five days, is granted by the administrative law judge. Responses to petitions to revoke shall be allowed only upon leave of the Executive Secretary or assigned administrative law judge, and on such terms as he or she deems appropriate.

(g) When a party serves a subpoena for the production of records of the Board or for the testimony of a Board agent, the general counsel may represent the Board or the Board agent and may, if appropriate, move to revoke the subpoena on the grounds stated in subsection (h) below.

(h) The Board or administrative law judge, as the case may be, shall revoke the subpoena or notice in whole or in part if the evidence required to be produced does not relate to any matter in question in the proceedings, or the subpoena or notice does not describe with sufficient particularity the evidence whose production is required, or the testimony or records sought are privileged or otherwise protected or deal with a matter not subject to review, or the subpoena is otherwise invalid. The scope of a subpoena or notice may be limited if the Board or administrative law judge determines that the material sought is: (i) unreasonably cumulative or duplicative, or (ii) obtainable from some other source that is more convenient, less burdensome, or less expensive; or (iii) unduly burdensome or expensive to provide, taking into account the needs of the case, the limitation of the resources of the parties, and the importance of the issues upon which it bears. A simple statement of the grounds for the ruling on the petition shall accompany the ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall become part of the official record upon the request of the party aggrieved by the ruling.

(i) Subpoenas duces tecum (as described in subsections (a) and (b), above) and notices to produce (as described in subsection (d), above) may be served by all parties with return dates for prehearing conferences. Witnesses may be examined orally under oath at such prehearing conferences, subject to the discretion of the administrative law judge, for the limited purpose of identifying and/or authenticating the matters and things produced pursuant to the subpoenas or notices. Such oral examination shall not be for the purpose of generally deposing the witnesses unless the same has previously been ordered by the executive secretary pursuant to the procedures in section 20246.

(j) Nothing in section 20250 shall compel the disclosure of information which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture unless that individual is a charging party; provided, however, that when a dispute arises concerning the propriety of turning over a writing which would make such identification likely, the privilege created by Evidence Code Section 1040(b)(2) is waived to the extent of allowing the administrative law judge to examine the entire document in camera to determine which, if

any, portions should be disclosed and which portions should be excised before being turned over; provided further, that this subsection shall not apply to otherwise unprotected or unprivileged business records.

(k) Upon any other failure of any person to comply with a subpoena or notice, the Board may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question. A request that the Board apply for an order may be made by the general counsel during investigatory stages of the proceedings or by any party following issuance of a complaint. The administrative law judge will review any requests made in the course of a hearing. If the administrative law judge deems the request appropriate, he or she shall promptly recommend that the Board seek enforcement of the subpoena or notice. The Board shall seek enforcement on relation of the general counsel or a party unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the Act. If the request is granted, the record will remain open in the matter until the Board determines that the court order will not be forthcoming, or that further delay would frustrate the policies of the Act, or until the testimony sought is included in the record.

(l) By causing the issuance of a subpoena or a notice, the attorney or representative or the party, if not represented, certifies that to his or her knowledge, information and belief, and after reasonable inquiry: (i) the testimony or material sought is relevant and material to the issues in the proceeding; (ii) the subpoena or notice is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or to needlessly increase the cost of litigation; and (iii) the subpoena or notice is not unreasonably or unduly burdensome or expensive, given the needs of the case, given the materials already in the hands of the party seeking the testimony or material, and given the importance of the issues upon which it bears.

§20251. Immunity.

(a) A party intending to call a witness who it believes will, pursuant to a claim of privilege against self-incrimination, refuse to testify or to produce evidence, and for whom the party intends to request, pursuant to Section 1151.2(b) of the Act, immunity from prosecution, shall file with the executive secretary a request that the Board grant immunity and direct the witness to testify.

(1) The request shall be filed with the executive secretary no later than 15 days prior to the time specified for compliance with the subpoena, or, if the witness is scheduled to appear at hearing, 15 days prior to the scheduled commencement of the hearing.

(2) A request for a grant of immunity shall contain the following information: the case name and number; the name of the witness; the details of any criminal prosecution currently pending against that witness; the name and address of the district attorney and United States Attorney of each county or district who may have reasonable grounds for

objecting to a grant of immunity, including, but not limited to, the district attorney or United States Attorney for any county or district in which a criminal prosecution is currently pending against the witness and the district attorney and United States Attorney for the county or district in which the events to which the witness will testify occurred; why the grant of immunity to the witness will further the purposes and policies of the Act; and any other argument in support of its request that it wishes to make. A copy of the subpoena and any accompanying declaration shall be attached to the request.

(3) Immediately upon receipt of a request for a grant of immunity the executive secretary shall forward a copy of it by certified or registered mail to the California Attorney General and to the district attorney and United States Attorney of each county or district who may have grounds for objecting to the grant of immunity. The request shall otherwise remain confidential unless and until the witness is called to testify.

Within 10 days of the date on which the executive secretary serves the request, the California Attorney General, a district attorney or a United States Attorney who wishes to oppose the granting of immunity to the witness shall do so by filing a statement in opposition to the grant of immunity with the executive secretary. The statement shall contain a declaration that the prosecuting authority is familiar with the substance of the request and shall set forth the grounds for opposing the grant of immunity.

(b) Immunity may be granted only if no appropriate prosecuting authority has presented reasonable grounds for denying immunity and the testimony sought appears likely to contribute materially to resolution of the issues in the case. A ruling on a request for immunity may be immediately appealed to the Board pursuant to section 20242.

(c) After commencement of a hearing, if a witness refuses to testify, claiming the privilege against self-incrimination, a party may request that the witness be granted immunity from prosecution and compelled to testify, if that party establishes that it could not, with due diligence, have known prior to the hearing that the witness was likely to claim the privilege against self-incrimination.

A request for a grant of immunity made for the first time during a hearing must be submitted in writing to the administrative law judge or investigative hearing examiner conducting the hearing and must contain the information specified in subsection (a)(2), above. The administrative law judge shall immediately forward such a request to the executive secretary for disposition by the Board and shall proceed with the hearing by taking the testimony of other witnesses if to do so appears feasible. The administrative law judge or investigative hearing examiner may order a continuance of the hearing pending disposition by the Board of a request for a grant of immunity.

§20255. Refusal of a Witness to Answer.

The refusal of a witness at any hearing to answer any question which has been ruled

proper shall, in the discretion of the administrative law judge, be grounds for striking all testimony previously given by such witness on related matters and/or for making such inferences as may be appropriate under the circumstances, unless the refusal to answer is privileged.

§20260. Hearings.

If there is a conflict in the evidence upon which an unfair labor practice is based, an evidentiary hearing shall be held. The hearing shall be public. If there is no conflict in the evidence, the parties may, where appropriate, file with the Board a stipulated set of facts and briefs and request permission to make oral arguments concerning matters of law.

§20261. Time of Hearings.

Hearings may be held at any time that the administrative law judge considers appropriate. Hearings shall continue from day to day until completed or recessed. Once a hearing has commenced, continuances or recesses will not be granted except in extraordinary circumstances, and then only by order of the executive secretary or, for recesses of two (2) working days or less, by order of the assigned administrative law judge.

§20262. Administrative Law Judges; Powers.

The hearing shall be conducted by an administrative law judge designated by the Board, unless the Board or any member of the Board presides. The duty of the administrative law judge is to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. Between the time he or she is designated and the time the case is transferred to the Board the administrative law judge shall, subject to the limitations specified elsewhere in these regulations, have authority, with respect to cases assigned to him or her:

(a) To administer oaths and affirmations;

(b) To grant applications for subpoenas;

(c) To rule upon petitions to revoke subpoenas or notices to appear or produce and to impose sanctions for failure to comply with appropriate subpoenas or notices to appear and produce;

(d) To require and/or rule upon offers of proof;

(e) (1) To regulate the course of the hearing, including the power, consistent with section 20800, to exclude from the hearing any person who engages in disruptive or abusive conduct.

(2) In excluding any person from a hearing, the administrative law judge shall state on the record the specific facts upon which the order of exclusion is based and submit to the Board a written statement of the specific facts which constitute the misconduct. The statement of facts with original and six copies shall be filed with the executive secretary and served on all parties to the hearing. The person excluded from a hearing may file a written response to the administrative law judge's written statement submitted to the Board. A ruling whereby any person is ejected from a hearing may be immediately appealed to the Board pursuant to section 20242.

(f) To conduct and regulate the course of pre-hearing conferences, settlement conferences, and hearings, to inquire fully into the basis for settlement submitted to them for recommendation, and to approve settlements as provided in section 20298.

(g) To dispose of procedural requests, motions, or similar matters; to dismiss complaints or portions thereof;

(h) To approve a stipulation voluntarily entered into by the parties;

(i) To make and file decisions in conformity with the Act and these regulations;

(j) To call, examine, and cross-examine witnesses and to require the production of and introduce into the record documentary or other evidence;

(k) To request the parties at any time during the hearing or pre-hearing conference to state their respective positions concerning any issue in the case or theory in support thereof either orally or in writing;

(l) To request that the Board seek a court order to compel compliance with a subpoena;

(m) To issue protective orders as may be appropriate and necessary; and

(n) To carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the Act.

§20263. Disqualification of Administrative Law Judge.

(a) No administrative law judge shall try any motion, hearing, or other proceeding which involves a contested issue of law or fact when it shall be established as hereinafter provided that such administrative law judge is prejudiced against any party or attorney or the interest of any party or attorney appearing in such action or proceeding.

(b) Whenever an administrative law judge shall have knowledge of any fact, which by reason of bias or prejudice makes it appear probable that a fair and impartial hearing cannot be

held before him or her, it shall be his or her duty to immediately notify the executive secretary, setting forth all reasons for his or her belief.

(c) Any party may request the administrative law judge to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing cannot be held by the administrative law judge to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts constituting the ground for the disqualification of such administrative law judge. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such administrative law judge admits his or her disqualification, such admission shall be immediately communicated to the executive secretary who shall designate another administrative law judge to hear the matter.

Notwithstanding his or her disqualification, an administrative law judge who is disqualified may request another administrative law judge who has been agreed upon by all parties to conduct the hearing.

(d) If the administrative law judge does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing and the issuance of the decision. The party requesting the disqualification may file exceptions to the hearing on the ground of the personal bias or disqualification of the administrative law judge along with exceptions to the decision.

§20266. Unavailability of Administrative Law Judge.

If the administrative law judge assigned to a hearing becomes unavailable for any reason, at any time between the beginning of the hearing and the issuance of the decision, the Board may transfer the case to itself for purposes of completing the hearing and decision, or the chief administrative law judge may designate another administrative law judge for such purpose.

§20268. Parties, Intervention.

The necessary parties to an unfair labor practice hearing are the general counsel and the respondent. The charging party may become a party to the hearing as a matter of right by notifying the Board or the assigned administrative law judge, orally or in writing, of its desire to intervene, provided that such notice is given prior to or at the prehearing conference. Thereafter, intervention shall be by motion to the assigned administrative law judge who shall grant the motion upon good cause shown for the failure to intervene earlier and upon such terms as he or she deems proper. Other persons may intervene and thereby become party to the hearing at the discretion of the executive secretary or the assigned administrative law judge by filing an appropriate motion.

§20269. Rights of Parties to a Hearing.

Any necessary party and any person granted party status pursuant to section 20268 shall have the right to appear at the hearing in person, or by counsel or other representative; to call, examine, and cross-examine witnesses; to introduce all relevant and material evidence, except that the participation of any intervening party may be limited by the administrative law judge.

§20270. Exclusion from Hearing.

Repealed.

§20272. Evidence.

Repealed.

§20274. Production of Statements of Witnesses After Direct Testimony.

(a) After direct examination of a witness, and upon motion of any party, the administrative law judge shall order the production of any statements of the witness in the possession of any other party that relate to the subject matter of the testimony. Should the statements produced be in a language other than English, a translation of the statement shall be made by the official interpreter retained for the proceeding.

(b) A statement includes a written declaration by the witness, signed or otherwise adopted or approved by him or her, or a recording or transcription of a recording which is a verbatim recital of an oral statement that was recorded at the time the statement was made.

(c) If the party sponsoring the testimony claims that a statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony or matter which is privileged, the party shall deliver the statement to the administrative law judge for his or her private inspection. The administrative law judge may excise those portions of the statements which do not relate to the subject matter of the testimony or the subject matter of the hearing, or which are privileged. The remainder of the statement shall be delivered to the moving party.

§20276. Reporting of Hearings.

The hearing and the prehearing conference shall be reported or recorded by any appropriate means designated by the Board. The transcript of the reporter or the recorded tapes shall constitute the official record of the hearing or prehearing conference. In case of material inaccuracies, corrections may be made by motion presented to the administrative law judge or, after the case has been transferred, to the Board.

§20277. Close of Hearing; Argument.

Any party may present an oral argument on the record at the close of the taking of testimony.

§20278. Briefs to the Administrative Law Judge.

(a) Except as provided in subsection (e) below, following the close of the hearing, any party may file a post-hearing brief.

(b) Where no party orders transcripts prior to the close of the hearing, any brief shall be filed within 20 days of the close of the hearing or within such other period as the assigned administrative law judge may direct.

(c) Where any party orders a transcript prior to the close of the hearing, any brief shall be filed within 20 days of the postmark date of mailing of the last volume of the transcript or within such other period as the assigned administrative law judge may direct.

(d) Briefs shall be filed with the executive secretary and served on the parties as defined in section 20130 and in the manner provided in sections 20160 and 20166 and, in addition, a copy shall be served on the assigned administrative law judge. Briefs filed by parties shall, so far as possible, cite to those portions of the transcript which support their position. No brief shall exceed 50 pages in length except that, upon prior request, the administrative law judge may permit longer briefs when necessary. Any brief which exceeds 20 pages shall contain a table of contents and a table of authorities cited. Any table of contents or table of authorities shall not be counted as part of the 50 pages.

(e) The administrative law judge may order briefs dispensed with and the case submitted upon oral argument on the record at the close of the taking of testimony where (1) the administrative law judge assigned to the hearing determines: (i) that counsel will be able to effectively present their positions orally and (ii) determines that the legal and factual issues are not sufficiently novel or complex so as to necessitate briefing; and (2) the parties are given sufficient time after issuance of the order to prepare the oral argument. In addition, in all cases the administrative law judge assigned to the hearing shall have the discretion to limit briefing to specified topics or issues, or to direct limited briefing on an expedited schedule either before or after receipt of transcripts.

§20279. Administrative Law Judge's Decision.

The administrative law judge shall file a decision with the executive secretary within 30 days of the administrative law judge's receipt of all transcripts or records of the proceedings, exhibits, and briefs from those parties who submit briefs, or within such other period as the executive secretary may direct in extraordinary circumstances. The decision shall contain findings of fact, conclusions of law, and the reasons for the conclusions. If the administrative law

judge finds that an unfair labor practice has been committed, the decision shall contain an order for such affirmative action by the respondent as will effectuate the policies of the Act.

§20280. Transfer of Case to Board; Contents of Record.

(a) Upon the filing of the decision of the administrative law judge, the case shall be deemed transferred to the Board, and the executive secretary shall serve copies of the decision of the administrative law judge on all the parties pursuant to section 20164.

(b) The charge upon which the complaint was issued and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, responses, rulings, orders, the official record of the prehearing conference and of the hearing, stipulations, exhibits, documentary evidence, depositions, post-hearing briefs, the administrative law judge's decision and exceptions thereto, supporting briefs, and any answering briefs as provided in section 20282 shall constitute the record in the case.

§20282. Exceptions to the Administrative Law Judge's Decision.

(a) Within 20 days after the service of the decision of the administrative law judge, or within such other period as the executive secretary may direct, any party may file with the executive secretary for submission to the Board the original and seven copies of exceptions to the decision or any other part of the proceedings, with an original and seven copies of a brief in support of the exceptions, accompanied by proof of service, as provided in section 20160 and 20166.

(1) The exceptions shall state the ground for each exception, identify by page number that part of the administrative law judge's decision to which exception is taken, and cite to those portions of the record which support the exception.

(2) A brief in support of exceptions which exceeds 20 pages shall contain a table of contents and a table of authorities cited. No brief shall exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs when necessary. The table of contents and the table of authorities cited shall not be counted as part of the 50 pages. If a post-hearing brief is incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the brief in support of exceptions.

(b) Within ten (10) days following the filing of exceptions or within such other period as the executive secretary may direct, a party opposing the exceptions may file with the executive secretary for submission to the Board, an original and (7) seven copies of a brief answering the exceptions. An answering brief that exceeds 20 pages shall contain a table of contents and a table of authorities cited. This brief shall not exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs when necessary. The table of contents and the

table of authorities cited shall not be counted as part of the 50 pages. The answering brief shall be filed and served in accordance with sections 20160 and 20166.

(c) No further brief shall be filed except as requested by the Board. No extensions of time will be given to file exceptions or briefs except in extraordinary circumstances. Unless permission to file a brief exceeding the page limitations specified in subsection (a)(2) and (b) above has been obtained from the executive secretary in advance, only the first 50 pages of exceptions briefs and answering briefs shall be accepted and filed. Anything in excess of 50 pages will be returned to the party and will not be considered by the Board.

(d) No matter not included in the exceptions filed with the board may thereafter be raised by any party before the Board.

§20284. Transcriptions.

Repealed.

§20286. Board Action on Unfair Labor Practice Cases.

(a) If no exceptions are filed, the decision of the administrative law judge shall automatically become final 20 days after the date on which the decision of the administrative law judge is served on the parties. Unless expressly adopted by the Board, the statement of reasons in support of the decision shall be without precedent for future cases.

(b) Where one or more parties take exception to the decision of the administrative law judge, the Board shall review the applicable law and the evidence and determine whether the factual findings are supported by a preponderance of the evidence taken.

(c) A party to an unfair labor practice proceeding before the Board may, because of extraordinary circumstances, move for reconsideration or reopening of the record after issuance of the Board's final decision and order, in accordance with the provisions set forth in section 20160(a)(1), and served on the parties, in accordance with the provisions set forth in sections 20166 and 20168. The motion may alternatively request reconsideration and reopening. Such motions shall be in writing and state with particularity the grounds for reconsideration or reopening. Any motion pursuant to this section shall be filed within 10 days after the service of the Board's final decision and order. A motion filed under this section shall not operate to stay the decision and order of the Board.

(d) A party to an unfair labor practice proceeding may, because of extraordinary circumstances, move for reconsideration of the record after issuance of any Board action other than a final decision and order, in accordance with the provisions set forth in section 20286(c), except that the motion and supporting documents must be filed within five days after service of the non-final Board action.

§20287. Precedential Nature of Board Decisions.

All Board decisions published in the format bearing a volume and decision number (example: 1 ALRB No. 1) shall constitute precedent for future cases. Numbered administrative orders shall be precedential only if expressly so designated by the Board.

§20290. Initiation of Compliance Proceedings.

(a) If it appears that a controversy exists with respect to the compliance with a Board order, a court decree enforcing a Board order, or an administrative law judge's decision which has become final, and such controversy cannot be resolved without a formal proceeding, the regional director shall issue in the name of the Board and serve on all parties a compliance specification as provided in subsections (a), (b), (c) or (d) of section 20291. The specification shall be consistent with precedent under the Act and shall contain, or be accompanied by, a notice of hearing. In the alternative and in appropriate circumstances, the regional director shall issue and serve on the parties a notice of hearing without a specification as provided in section 20291(e). The notice of hearing with or without specification may provide for a hearing to be held before an administrative law judge not less than fifteen (15) days after the service of the notice; it shall be filed with the executive secretary and served on each party as provided in sections 20160 and 20164.

(b) Whenever the regional director deems it appropriate in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs and delay, he or she may consolidate with a complaint and notice of hearing issued pursuant to section 20220, a compliance specification based on that complaint. After the opening of the pre-hearing conference, consolidation shall be subject to approval of the administrative law judge or the Board as provided in section 20244. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in an administrative or judicial forum which the Board or regional director determines to be appropriate for obtaining compliance with a Board order.

§20291. Contents of Compliance Specification or Notice of Hearing without Specification.

(a) Contents of specification with respect to allegations concerning the amount of backpay due. With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee:

(1) The backpay period;

(2) The amount of gross backpay owed, the method of its computation, the data used in making the computation, and the reasons for selecting the method and data utilized;

(3) The amount and source of interim earnings, the method of allocation, e.g., weekly average, and the reasons for selecting that method;

(4) Amount and type of expenses claimed;

(5) Net backpay, including the method of calculation and the reasons for selecting that method.

(6) Missing or deceased discriminatees and the requested method for handling their claims;

(7) The interest due to the date of the specification and a demand for appropriate interest thereafter;

(8) Any other pertinent information.

(b) Contents of specification with respect to allegations concerning the amount of bargaining makewhole due. The bargaining makewhole specification shall specifically and in detail show for all employees entitled to bargaining makewhole, including employees entitled to a makewhole supplement to backpay:

(1) The bargaining makewhole period;

(2) Actual gross earnings, or gross backpay for discriminatees not working during the bargaining makewhole period;

(3) The bargaining makewhole wage rate; the comparable contract(s) or other economic measures upon which it is based, together with the reasons for their selection; and the manner in which the makewhole rate was derived from the comparable contract(s) or other economic measures;

(4) Fringe benefits owed, the contract(s) or other economic data from which they were derived, the reasons for utilizing the contract(s) or other data, and the method by which fringe benefits were derived from the contract(s) or other data;

(5) Net bargaining makewhole and/or bargaining makewhole supplement due;

(6) The interest due to the date of the specification and a demand for appropriate interest thereafter;

(7) Any other pertinent information;

(c) Contents of specification with respect to allegations other than the amount of backpay or makewhole due. With respect to allegations other than the amount of backpay or makewhole

due, the specification shall contain a detailed description of the respects in which the person(s) named as respondent(s) have failed to comply with the Board order, court decree, or final administrative law judge's decision, including the remedial acts claimed to be necessary for compliance by the respondent(s).

(d) Use of Partial Specifications. Where, for good cause alleged and established at hearing, the regional director is unable to prepare a full specification as described in subsection (a), (b) or (c) above, he or she may issue a partial specification alleging in detail all information which is reasonably ascertainable, and the matter shall proceed on that basis.

(e) Use of Notice of Hearing without Specification. In appropriate circumstances, the regional director may issue a notice of hearing without a specification, containing a clear and detailed statement of the matter(s) in controversy and any relief sought. The regional director shall include in the notice of hearing the reason or reasons for dispensing with a specification and must substantiate such reason(s) if they are called into question during the course of the proceedings.

(f) Issues Involving Derivative Liability. Where the regional director believes that a person or persons not named in a Board order, court decree, or final administrative law judge's decision, is jointly or derivatively liable to comply with such order, decree, or decision, that liability may be determined in a compliance proceeding initiated under subsection (a), (b), (c), (d), or (e) above, in which the regional director has named the person or persons as respondent(s) and has alleged the legal and factual basis for their joint or derivative liability.

§20292. Answer to Compliance Specification.

(a) Filing and Service of Answer; Form. Each person alleged as a respondent in the specification or notice of hearing without specification shall, within fifteen (15) days from the service of the specification or notice of hearing without specification, file and serve an answer thereto as provided in sections 20160 and 20166.

(b) Contents of Answer. The answer shall state which facts alleged in the specification or notice of hearing without specification are admitted, which are denied, and which are outside the knowledge of the respondent or any of its agents. Any allegation not denied shall be considered admitted. Except for matters not reasonably ascertainable by a respondent, a general denial or a denial on information and belief shall not suffice. As to such reasonably ascertainable matters, including, but not limited to, gross backpay, actual wages, comparable contract(s), and fringe benefits, if respondent disputes either the accuracy of the facts or figures in the specification or the premises on which they are based, it shall specifically state the basis for its disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting facts and figures, including a specific alternative methodology for computing amounts owed should the respondent dispute the validity of the +methodology used in the backpay specification.

(c) Effect of Failure to Answer or to Plead Specifically and in Detail to Backpay and Makewhole Specification. If a respondent fails to file an answer within the time prescribed by this section, the administrative law judge may, either with or without taking evidence in support of the allegations and without notice to the respondent, find the allegations of the specification or the notice of hearing without specification to be true and issue an appropriate recommended order. If a respondent files an answer, but fails to deny any allegation of the specification or notice of hearing without specification in the manner required by subsection (b) of this section, and the failure to deny is not adequately explained, such allegation shall be deemed admitted, and may be so found without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

§20293. Processing of Compliance Proceedings.

(a) Specifications, notices of hearings without specification, and answers to them may be amended in the same manner as complaints and answers to complaint.

(b) Specifications and notices of hearing without specification may be withdrawn in the same manner as complaints.

(c) After the issuance of a specification or notice of hearing without specification, the procedures provided for in sections 20235 through 20298 shall be followed so far as applicable.

§20298. Settlement Agreements; Review of Objections to Settlement Agreements.

(a) Matters settled: Settlement agreements of all types settle only the allegations contained in the cases, designated by number, which appear in the captions of the agreements and do not constitute settlement of any other cases or allegations, regardless of whether such matters are known to, or readily discoverable by, the General Counsel at the time the agreement is reached.

(b) Difference between formal settlement agreements and informal settlement agreements:

(1) A **formal** settlement agreement is a written agreement that must be approved by the Regional Director and the Board or the assigned Administrative Law Judge.

(2) An **informal** settlement agreement is a written agreement that must be approved by the Regional Director, but does not require approval by the Board or assigned Administrative Law Judge.

(c) Difference between bilateral and unilateral agreements:

（1） A **unilateral** settlement agreement is one signed by the Regional Director and the charged party(ies.)

(2) A **bilateral** settlement agreement is one signed by the Regional Director and both the charging party(ies) and respondent(s) in the case.

(d) Circumstances in which informal and formal settlement agreements are appropriate:

(1) An informal settlement agreement may be used only to adjust a charge or a complaint. It may not be used to adjust a specification, notice of hearing without specification, or previous Board order. It may not be used after the taking of testimony.

(2) A formal settlement agreement may be used to adjust a charge, complaint, specification, notice of hearing without specification, or previous Board order. Any agreement reached after the taking of testimony must be a formal agreement.

(e) Review of informal settlement agreements:

(1) There shall be no review of informal bilateral settlement agreements.

(2) Within 5 days after the Regional Director and the charged party(ies) sign an informal unilateral settlement agreement, the Regional Director shall serve on the charging party(ies) a copy of the agreement and a brief statement of reasons for his/her approval.

(3) Within 10 days after service of the informal unilateral settlement agreement and statement of reasons, the charging party(ies) may file an appeal of the agreement with the General Counsel. A statement of objections to the agreement shall accompany an appeal. A charged party(ies) may file a response within 5 days of service of the appeal.

(f) Review of formal settlement agreements:

(1) Review of formal settlement agreements entered into prior to the taking of testimony or after the issuance of an Administrative Law Judge's decision:

(A) Formal settlement agreements executed before the taking of testimony or after the issuance of an Administrative Law Judge's decision, no matter whether unilateral or bilateral, shall be submitted directly to the Board together with a full statement submitted on behalf of the General Counsel in support of the agreement. If the agreement is unilateral, at the same time as the settlement and the reasons in support thereof are submitted to the Board, they shall also be served upon the charging party(ies). Within 5 days of service of the settlement and statement of reasons, the charging party(ies) may file with the Board a statement of objections to the settlement.

(2) Review of formal settlement agreements entered into after the taking of testimony but prior to the issuance of an Administrative Law Judge's decision:

(A) A bilateral formal settlement agreement entered into after the taking of testimony and prior to the issuance of the administrative law judge's decision shall be submitted, together with a full statement in support of the settlement made on behalf of the General Counsel, to the assigned administrative law judge who shall thereupon determine whether the settlement serves the purposes of the Act.

(1) If the assigned administrative law judge recommends approval of the settlement, he/she shall issue an appropriate order, which shall be served upon the parties and shall thereupon become the order of the Board.

(2) If the assigned administrative law judge recommends rejection of the settlement, within 5 days of the rejection, any party may file with the Board a request for review of the administrative law judge's decision.

(B) A unilateral formal settlement agreement entered into after the taking of testimony and prior to the issuance of the administrative law judge's decision shall be submitted, together with a full statement in support of the settlement made on behalf of the General Counsel, to the assigned administrative law judge and served upon the charging party(ies.) If the hearing is in session, the charging party(ies) may make any objection to the settlement upon the record. If the hearing is not in session at the time of submission of the proposed unilateral formal settlement agreement, charging party(ies) shall serve any objections to the settlement upon the administrative law judge, the Regional Director, and the Respondent(s) within 5 days after service of the agreement on the charging party(ies.)

(1) The administrative law judge shall issue an appropriate order recommending approval or rejection of the proposed unilateral formal settlement agreement, which order shall be served upon the parties.

(2) If the administrative law judge recommends approval of the unilateral formal agreement, charging party(ies) shall have five days from service of the order approving the settlement to file a request for review with the Board. If no request for review is filed, the order issued by the administrative law judge shall thereupon become the order of the Board.

(3) If the administrative law judge recommends rejection of the unilateral formal settlement agreement, within five days after service of the order rejecting the proposed settlement, any party may file a request for review of the order rejecting the proposed settlement.

§ 20299. Agricultural Employee Relief Fund

(a) This subsection shall apply to all cases in which the Board has ordered monetary relief for agricultural employees or has issued an order approving a settlement agreement providing for payment of monies to agricultural employees, where the collection of monies pursuant to such orders or settlement agreements occurred on or after January 1, 2002. In addition, this subsection shall apply where the collection of monies occurred prior to January 1, 2002 if the monies were not subject to an enforceable promise to return them to the employer and had not escheated to the State by operation of law as of January 1, 2002.

(1) Where, despite diligent efforts, the Board has been unable to locate employees or any person(s) legally entitled to collect money on their behalf for a period of two years after the date the Board collected monies on behalf of such employees, those monies shall be deposited in a special fund in the State Treasury that shall be named the Agricultural Employee Relief Fund (Fund).

(2) Provisions requiring that monies collected on behalf of employees who are not located within two years after the date of collection be deposited in the Fund may be included, pursuant to the mutual agreement of the Regional Director and the employer, in informal settlement agreements reached in accordance with section 20298.

(b) When a regional director has good cause to believe that the collection of the full amount of monetary relief previously ordered by the Board is not possible after reasonable efforts have been made to collect the balance from the employer, the regional director shall file a motion seeking a finding by the Board that the case is eligible for pay out from the Fund. In the case of formal settlement agreements, as defined in section 20298, where there has been a prior adjudication by the Board of the amounts owing, such adjudication shall define the full amount of monetary relief owing to employees. Where there has not been a prior adjudication of the amount owing to employees, the full amount owing to employees shall be the amount specified in the formal settlement agreement. The motion shall be filed with the Board and served on the parties to the case in accordance with sections 20160 and 20166, and shall be accompanied by a statement describing the collection efforts made to date and the basis for the regional director's belief that collection of the full amount owing is not possible. Any party to the case may file a response within ten (10) days of service of the motion. If the Board grants the motion, the case shall become eligible for pay out from the Fund, in accordance with the provisions below.

(1) Within ninety days after the end of each fiscal year, the Board shall determine the amounts to be paid to eligible employees and shall begin distribution of those amounts.

(2) Employees eligible for pay out from the Fund shall be those entitled to monetary relief pursuant to orders in cases in which the Board has made the Fund eligibility finding specified in subsection (b) above. Such employees shall be included in the next annual determination referred to in subsection (b)(1). Eligibility shall continue

for two successive annual determinations. Thereafter, eligibility for pay out from the Fund shall expire. In no event shall an employee be paid an amount from the Fund exceeding the amount owed but not collected from his or her employer.

(3) The amount to be distributed to each employee eligible for pay out shall be calculated as follows. The total amount of unallocated money in the Fund shall be divided by the aggregated total of the amounts owing to eligible employees. The resulting ratio shall be multiplied by the amount owing to each eligible employee to determine the amount to be distributed to each eligible employee. However, if the ratio is greater than one, it shall be deemed to be one for the purpose of calculating the amounts to be distributed and any monies in excess of the amounts necessary for distribution shall remain in the Fund for future distributions. For the purpose of the above calculation, the "amount owing to each eligible employee" shall not include any amounts allocated to the employee in previous fiscal years.

(4) Notwithstanding subsection (3) above, no amount less than one dollar shall be allocated or distributed to any employee.

(5) Where money from the Fund cannot be distributed because the employee to whom it is assigned cannot be located and/or does not claim the money, the money shall be held in the Fund for distribution to that employee until one year has elapsed from the expiration of eligibility for distribution from the Fund, at which time the claim shall be extinguished and the money shall revert to the Fund for use in making payments to other eligible employees. Eligibility for distribution shall be deemed to have expired after all allocations for which an employee is eligible or upon an employee being allocated 100% of the amount owed, whichever comes first. However, where a claimant can demonstrate that extraordinary circumstances prevented distribution or receipt of monies owing prior to the time that the claim was extinguished, the Board may approve payment of the claim.

(c) The provisions of subsection (b) shall be applied to every distribution from the Fund, unless the Board, within ten (10) days of the determination referred to in subsection (b)(1), finds that application of those provisions will result in manifest injustice. In the event of such a finding, the Board may alter the distribution in order to avoid such injustice.

(d) A motion to make a case eligible for pay out from the Fund pursuant to subsection (b) of this section shall be deemed to include a simultaneous motion to close pursuant to *John V. Borchard, et al.* (2001) 27 ALRB No. 1. In such event, the filing requirements set forth in this section shall be controlling. In the event that a closed case is later reopened pursuant to the criteria set forth in *John V. Borchard, et al.* (2001) 27 ALRB No. 1 and further collection of monies from the employer is effectuated, the Fund shall be reimbursed to the extent that the combination of the amount collected from the employer and the amount paid from the Fund exceeds the full amount owed to employees in that case.

Chapter 3. Procedure Under Chapter 5 of the Act for the Determination of Questions Concerning Representation of Employees

§20300. Petition for Certification Under Labor Code Section 1156.3.

(a) Procedure. A petition for investigation of a question concerning representation under Labor Code Section 1156.3(a), hereinafter called a petition for certification, may be filed as provided for in this part and in the Act.

(b) Form of the Petition. A petition for certification shall be in writing and signed. Printed forms for such petitions will be supplied by the regional offices of the Board upon request. Such petition shall contain a declaration, signed under penalty of perjury, that the petition's contents are true and correct to the best of the declarant's knowledge and belief.

(c) Amendments. A petition for certification may be amended by the petitioner, upon approval of the regional director, for good cause shown. Any amended petition shall be served upon the employer in accordance with the provisions of subsection (f) below for service of the initial petition.

(d) Number of Copies of Petition. An original and two copies of the petition for certification shall be filed in the regional office.

(e) Where Filed. A petition for certification shall be filed in the regional office having jurisdiction over the geographical area in which all or part of the unit encompassed by the petition is located.

(f) Service of the Petition. A petition for certification shall be served upon the employer in the manner set out herein. In order to be filed, a petition must be accompanied by proof of service of the petition on the employer, either by verified return of the person making personal service or by the return receipt from the post office. Service on the employer may be accomplished by service upon any owner, officer, or director of the employer, or by leaving a copy at an office of the employer with a person apparently in charge of the office or other responsible person, or by personal service upon a supervisor of employees covered by the petition for certification. If service is made by delivering a copy of the petition to anyone other than an owner, officer, or director of the employer, the petitioner shall immediately send a telegram or facsimile transmission to the owner, officer, or director of the employer declaring that a certification petition is being filed and stating the name and location of the person actually served and shall file with the regional office proof that the telegram or facsimile transmission was sent and received.

(g) Filing of Petition. A petition for certification shall be deemed filed upon its receipt in the appropriate regional office accompanied by proof of service of the petition upon the employer. As soon as possible upon the filing of a petition for certification, the regional office in which the petition is filed shall telephone the employer and give the employer the following

information: (1) the date and time of the filing of the petition and (2) the case number assigned to the petition. Notification by telephone or facsimile transmission shall be permissible in the event that notification by telephone is unavailable or unsuccessful.

(h) Withdrawal of Petition. A petition for certification may be withdrawn only with the consent of the regional director. Whenever the regional director approves the withdrawal of any petition, the matter shall be closed and the parties shall be notified of the withdrawal.

(i) Dismissal of Petition.

(1) The petition for certification shall be dismissed by the regional director whenever the contents of the petition or the administrative investigation of the petition disclose the absence of reasonable cause to believe that a bona fide question concerning representation exists, or the unit petitioned for is not appropriate, or there is not an adequate showing of employee support pursuant to section 20300(j).

(2) When the regional director has determined that the petition shall be dismissed, he or she shall issue a dismissal letter to the filing party and the employer setting forth the reasons therefor.

(3) The dismissal of a petition may be reviewed by the Board pursuant to the provisions of Labor Code Section 1142(b) and section 20393.

(j) Evidence of Employee Support.

(1) Pursuant to Labor Code Section 1156.3(a), evidence that a majority of the currently employed employees in the bargaining unit sought in the election petition support the petitioner shall be submitted with the petition. Such evidence shall consist of either: (a) authorization cards, signed by employees, dated, and providing that the signer authorizes the union to be his or her collective bargaining representative, or (b) a petition to the same effect signed by employees, each signature dated. No employee authorization dated more than one year prior to the date of filing of the election petition shall be counted to determine majority showing of interest. An authorization card or authorization petition signed by an employee at a time when the employee was not working for the employer named in the election petition shall, if otherwise valid, be counted in determining majority showing of interest.

(2) The regional director shall conduct an administrative investigation to determine whether there exists an adequate showing of employee support, as required by Labor Code Section 1156.3(a), to warrant the conduct of an election.

The administrative investigation may include solicitation from the petitioner and intervenor of their positions with respect to the accuracy and completeness of the employee list submitted pursuant to section 20310(a)(2). If the regional director

determines that there is insufficient showing of interest, he or she may grant the petitioner an additional 24-hour period, from the time the regional director notifies the petitioner that its showing of interest is insufficient, to submit additional showing of interest. Authorization cards or other showing of interest shall be held confidential.

(3) In determining the number of currently employed employees for the purposes of Labor Code Section 1156.3(a) or these regulations, when the number of employees on the employer's list conflicts with the number alleged in the petition, the regional director may independently ascertain by administrative investigation the number of persons actually working in the appropriate payroll period.

(4) Any party which contends that the showing of interest was obtained by fraud, coercion, or employer assistance, or that the signatures on the authorization cards were not genuine, shall submit evidence in the form of declarations under penalty of perjury supporting such contention to the regional director within 72 hours of the filing of the petition. The regional director shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When evidence submitted to the regional director gives him or her reasonable cause to believe that the showing of interest may have been tainted by such misconduct, he or she shall conduct an administrative investigation. If, as a result of such investigation, the regional director determines that the showing of interest is inadequate because of such misconduct, he or she shall dismiss the petition. Nothing in this subsection shall diminish the applicability of Labor Code Section 1151.6 to instances of forgery of authorization cards.

(5) The regional director's determination of the adequacy of the showing of interest to warrant the conduct of an election shall not be reviewable.

§20305. Contents of Petition for Certification; Construction.

(a) Contents--A petition for certification shall contain the following, in addition to those requirements set forth in Labor Code Section 1156.3(a):

(1) The name and address of the petitioner and its affiliation, if any.

(2) The name, location, and mailing address of the employer.

(3) The nature of the employer's agricultural commodity or commodities encompassed by the unit.

(4) A description of the bargaining unit which the petitioner claims is appropriate. If the unit sought encompasses less than all the agricultural employees of the employer, the petition shall include a specific and complete description of the unit, including its geographical limits, and a statement of inclusion or exclusion of processing or packing sheds or cooling facilities and the location of such sheds or facilities.

(5) The approximate number of employees currently employed in the alleged unit.

(6) Whether a strike is in progress for the unit involved, and if so, the approximate number of employees participating and the date such strike commenced.

(7) A statement of which languages, if any, other than Spanish and English, the petitioner requests be included on the ballots in any election conducted pursuant to said petition and the approximate number of employees who can effectively read the requested language and no other language in which the ballot would otherwise be printed.

(8) Name and telephone number of one representative of the filing party authorized to make agreements with the Board and the parties and to accept service of papers.

(b) A petition shall be liberally construed to avoid dismissal. In the event that petitioner fails to provide the information required by this section, thereby preventing the regional director from determining the existence of reasonable cause to believe that a bona fide question of representation exists, the regional director may, after consultation with the parties, dismiss the petition and notify the parties of the reasons thereof.

§20310. Employer Obligations.

(a) Employer's Written Response to the Petition. Upon service and filing of a petition, as set forth above, the employer so served shall provide to the regional director or his or her designated agent, within the time limits set forth in subsection (d), the following information accompanied by a declaration, signed under penalty of perjury, that the information provided is true and correct:

(1) The employer's full and correct legal name, a description of the nature of its legal entity, a full and correct address, and the name, address, telephone number, location and title of a person within the employer's organization who is authorized to accept service of papers. Such person shall also be one who is authorized to make agreements with the Board and the parties regarding the petition unless the employer has notified the regional office that it has a designated outside attorney or other outside representative who is to be contacted regarding the petition.

(2) A complete and accurate list of the complete and full names, current street addresses, and job classifications of all agricultural employees, including employees hired through a labor contractor, in the bargaining unit sought by the petitioner in the payroll period immediately preceding the filing of the petition. "Current street addresses" means the address where the employees reside while working for the employer. The employee list shall also include the names, current street addresses, and job classifications of persons working for the employer as part of a family or other group for

which the name of only one group member appears on the payroll. If the employer contends that the unit sought by the petition is inappropriate, the employer shall additionally, and within the time limits set forth in subsection (d), provide a complete and accurate list of the names and addresses of the employees in the unit the employer contends to be appropriate, together with a written description of that unit. If an employer chooses to submit, in addition to the information required, W-4 forms, social security numbers, employee signature facsimiles, or similar information, the regional director shall use such information to confirm the validity of the union's showing of interest only to the extent he or she deems appropriate in his or her discretion. Such information may also be used by the regional director to the extent he or she deems appropriate in his or her discretion in order to resolve allegations of fraud in the showing of interest pursuant to section 20300(j)(4) of these regulations.

(3) The names of employees employed each day during the payroll period immediately preceding the filing of the petition. This information may be submitted in the form of a copy of the employer's original payroll records or in some other form acceptable to the Board agent assigned to the case. The regional offices shall not disclose these records to any party.

(4) The duration and timing of payroll periods for the unit sought, for example, weekly, Sunday-Saturday payroll, or bimonthly payroll commencing on the 1st and 15th of each month. If employees in the unit sought are paid on more than one payroll period, the employer shall give the duration and timing of each payroll period and lists of which employees are covered by each payroll period.

(5) The names, addresses, and telephone numbers of all labor contractors supplying labor during the pertinent payroll period(s).

(6) A statement of the peak employment (payroll period dates and number of employees) for the current calendar year in the unit sought by the petition. If the employer contends that the petition was filed at a time when the number of employees employed constituted less than 50% of its peak agricultural employment for the current calendar year, the employer shall provide evidence sufficient to support that contention. If it is contended that the peak employment period has already passed, such evidence shall include payroll records which show both the names and actual number of (agricultural) employees employed each day and the number of hours each employee worked during the peak payroll period. If it is contended that the peak payroll period will occur later in the calendar year, such evidence shall include payroll records which show both the names and actual number of (agricultural) employees employed each day and the number of hours each employee worked during the peak payroll period from the previous year(s), as well as any other information in the employer’s possession which would be relevant to the determination of peak employment requirements.

(7) If the employer challenges the accuracy of any of the other allegations of the

petition required by Labor Code Section 1156.3(a), in particular subsections (a)(2), (3), and (4), the employer shall provide information to support these contentions.

(8) A statement of which languages, if any, other than Spanish and English, the employer requests be included on the ballots in any election conducted pursuant to the petition, and the approximate number of employees who can effectively read the requested language and no other in which the ballot would otherwise be printed.

(b) Form of List. The list included in the employer's written response to the petition for certification should be in the following form:

(1) Typewritten or otherwise legibly prepared.

(2) Alphabetical. However, if the payroll is prepared according to crew or work group, the list should be provided alphabetically within each crew or work group.

(c) Where Provided. The employer's written response to the petition under subsection (a) above shall be presented at the regional office of the Board noted as the place of filing on the face of the petition, unless the employer is notified by an agent of the Board that the case has been transferred to another region, or unless, in any particular case, some other arrangement for making the information available at a different location is agreed to by the regional director or Board agent assigned to the case.

(d) Timing for Filing Employer's Written Response. The requirements set forth above in subsections (a) through (c) shall be satisfied by making such information available in the place specified in subsection (c) above not more than 48 hours after filing of a petition with proof of service. However, when said 48-hour period expires on a Sunday or legal holiday, the time to provide such information shall be extended to the corresponding hour on the next business day following.

(e) Effect of failure to comply with subsections (a) through (d) above:

(1) If an employer fails to comply with the requirements of subsections (a) through (d) above, and such failure frustrates the determination of particular facts, the regional director may invoke any or all of the following presumptions:

(A) That there is adequate employee support for the petition and for any intervention.

(B) That the petition is timely filed with respect to the employer's peak of season.

(C) That all persons who appear to vote, who are not challenged by the board agent or by a party other than the employer, and who provide adequate

identification, are eligible voters. This presumption shall be invoked only when no employee list is submitted or when the regional director determines that the list as submitted is substantially inadequate for the purpose of determining employee eligibility. Invocation of this presumption does not prevent the employer's observers from recommending challenges to the Board agent on the grounds listed in section 20355.

(2) The determination of whether or not an employee list complies with the requirements of these regulations or is timely filed will be made by the regional director. If the regional director determines that a list is not complete or accurate, he or she shall state the reasons therefor in writing and serve pursuant to section 20164 a copy of such written reasons on all parties.

(3) The failure of an employer to provide the information required by subsection (a) within the time period specified shall not be excused by the employer's desire to consult with its attorney or by the failure of the person served pursuant to section 20300(f) to inform it of the service of a petition for certification on it.

(4) The failure of an employer to provide a complete or accurate employee list shall not be excused by the fact that the employer based its information on information supplied to it by a labor contractor.

§20313. Availability of Employer's Payroll List.

The regional director will make available a copy of the employer's payroll list referred to in section 20310(a)(2) to the petitioner upon the determination that it has submitted a majority showing of interest and to any intervenor upon the determination that it has submitted a 20% showing of interest.

§20320. Foreign Language Ballots.

Requests pursuant to Labor Code Section 1156.3(a) that the Board make available ballots in a language or languages other than English and Spanish shall be made by any petitioner by completing the appropriate section of the petition for certification form, by any intervenor as part of its written motion to intervene, and by any employer as provided in section 20310(a)(8). Any supplemental request by a petitioner, intervenor, or employer or any request by an agricultural employee eligible to vote in the election shall be in writing and shall state the languages required and the approximate number of employees who can effectively read the requested language and no other language in which the ballot would otherwise be printed. Such request shall be filed with a regional office of the Board which is processing the petition no later than 24 hours prior to the scheduled time of the election. Where practicable, requests for additional foreign languages on the ballot will be granted.

§20325. Intervention.

(a) Subject to the provisions of Labor Code Section 1156.3(b), any labor organization which seeks to intervene in an election proceeding based on a petition filed under Labor Code Section 1156.3(a) must file with the regional office of the Board in which the petition is being processed a written petition for intervention. In order to be filed, an intervention petition must be accompanied by proof of service of the intervention petition on the employer and on the original petitioner. Service of an intervention petition shall be in accordance with the provisions of section 20300(f) of these regulations. Upon the filing of an intervention petition, the regional director shall notify the employer and petitioner that an intervention petition has been filed.

(b) A petition for intervention shall include: (1) the name and address of the intervening union and its affiliation, if any; (2) the name and telephone number of a representative of the intervenor authorized to make agreements with the Board and the parties and to accept service of papers; and (3) a statement of what language or languages other than English or Spanish are required for the election, if any.

(c) If the intervenor contends that the geographical scope of the unit sought in the election petition is incorrect or challenges any of the allegations in the petition made pursuant to Labor Code Section 1156.3(a), the intervenor shall raise these contentions in the petition for intervention.

(d) The petition shall also be accompanied by evidence of employee support for the intervention by at least 20 percent of the employees in the bargaining unit. The regional director shall determine administratively whether there exists an adequate showing of employee support to permit intervention. If the regional director determines that the showing of interest is inadequate, the deficiency may be corrected up to 24 hours prior to the time of the election. Sections 20300(j)(4) and (5) with respect to challenges to showing of interest and reviewability of the regional director's determination on showing of interest shall be applicable also to showing of interest by an intervenor.

(e) In computing the 24-hour period for intervention provided for in Labor Code Section 1156.3(b) and the 24-hour period permitted for correcting deficiencies in showing of interest as provided by subsection (d) above, Sundays and legal holidays shall be excluded. If the time for filing an intervention petition elapses at a time when the regional office is closed, such petition may be timely filed during the first hour of business on the next business day. When any election is scheduled prior to the opening of business on a Monday or on the day following a legal holiday, a potential intervenor shall notify the regional director of its intention to intervene during regular business hours, and the regional director shall make arrangements to receive the petition at a reasonable hour no later than 24 hours prior to the opening of the polls.

(f) Any labor organization which, prior to the pre-election conference, files with the appropriate regional office a written statement of intention to intervene in a particular election but has not yet filed its intervention petition accompanied by an adequate showing of interest, may send one representative to a pre-election conference which may take place before the period

for intervention expires.

§20330. Cross-Petitions.

(a) Whenever a petition is filed which encompasses a unit for which a valid petition is currently on file, and no election has yet been directed, the Board or the regional director will determine which of the petitions seeks the appropriate unit, in the event the petitions do not seek the same unit. When the petitions seek the same unit an election will be directed in that unit if the regional director determines it to be appropriate. Both petitions shall be deemed to be cross-petitions. As soon as possible after a cross-petition is filed, the regional director or Board agent assigned to the case shall notify the employer and the original petitioner by telephone that a cross-petition has been filed.

(b) When a cross-petition is filed after the Notice and Direction of Election has been distributed but prior to the 24-hour intervention period set forth in Labor Code Section 1156.3(b), the later petition or petitions will be treated as a motion to intervene. A cross-petition which is not accompanied by a majority showing of interest shall be treated as a petition for intervention if it is accompanied by at least a 20 percent showing of interest. Nothing contained in these rules shall preclude an intervenor or cross-petitioner from challenging the appropriateness of the unit in which an election was conducted by filing a petition pursuant to Labor Code Section 1156.3(c).

(c) A cross-petitioner shall be subject to the same obligations with respect to service of the cross-petition as apply to service of the petition by the petitioner pursuant to section 20300(f). If the cross-petitioner contends that the allegations with respect to peak employment in the original petition are incorrect, it shall raise that contention in writing to the regional director within 48 hours of the filing of the cross-petition.

§20335. Transfer, Consolidation, and Severance.

(a) Whenever it appears necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the Board or the regional director after consultation with the parties, may order that any petition and any proceedings that may have been instituted with respect thereto:

(1) Be consolidated with any other proceedings which may have been instituted in the same region;

(2) Be transferred and continued before the Board for the purpose of investigation or consolidation with any other proceeding which may have been instituted in any regional office;

(3) Be severed from any other proceeding with which it may have been consolidated pursuant to this section; or

(4) Be transferred to and continued in another regional office for the purpose of investigation or consolidation with any proceeding which may have been instituted in or transferred to such regional office.

(b) Whenever a petition under Labor Code Section 1156.3(c) is properly filed, the Board may, at its discretion, sever issues relating to the appropriateness of the bargaining unit, employment peak, or the accuracy of the allegations in the petition made pursuant to Labor Code Section 1156.3(a)(2), (3), or (4).

(c) Whenever a petition under Labor Code Section 1156.3(c), objecting to the conduct of the election or conduct affecting the results of the election is on file, and there is concurrently on file a charge under Chapter 4 of the Act alleging the same or some of the same matter which form the basis of said petition, the Board may request that the unfair labor practice charge receive expedited investigation and processing and, in appropriate circumstances after issuance of a complaint, order that the concurrent unfair labor practice charge and the petition under Labor Code Section 1156.3(c) be consolidated. Any resulting hearing will be governed by the procedures set forth in Chapters 4 and 6 of the Act. The general counsel or his or her representative may participate as a party in any such proceeding.

§20345. Service.

Chapter 1.5, section 20150, and following, governing service, shall be applicable to proceedings under this chapter except as otherwise provided herein.

§20348. Time.

Chapter 1.5, section 20170, governing computation of time periods, shall be applicable to proceedings under this chapter except as otherwise provided herein.

§20350. Election Procedure.

(a) All elections shall be conducted under the supervision of the appropriate regional director. All elections shall be by secret ballot and shall be conducted at such times and places as may be ordered by the regional director. Reasonable discretion shall be allowed to the agent supervising the election to set the exact times and places to permit the maximum participation of the employees eligible to vote.

(b) Each party may be represented at the election by observers of its own choosing who should be designated at the pre-election conference, but in no event less than 24 hours before the start of the election. Such observers must be non-supervisory employees of the employer, except the petitioner, of an employee, also may not be an observer. Other persons, with the exception of supervisors or the petitioner, may be observers if agreed to by all parties in writing. Observers so designated should not wear or display any written or printed campaign material or otherwise

engage in any campaign activities on behalf of any party while acting as observers. The Board agent has the discretion to determine the number of observers which each party may have. Any party objecting to the observers designated by another party must register the objection and the reasons therefore with the Board agent supervising the election by the close of business the day immediately preceding the election. Failure to so register such objections will be construed as a waiver of the right to object to the conduct of the election on such ground. The regional director shall have the discretion to modify the time limits contained in this regulation where a strike election makes such limits impracticable or in other extraordinary circumstances.

(c) All parties shall be required, upon request by the regional director or his or her agent, to cooperate fully in the dissemination to potential voters of official Board notices of the filing of a petition and official Board notices of direction of an election and any other notices which, in the discretion of the regional director or his or her agent, are required to fully apprise potential voters of the time and location of an election.

(d) Unless otherwise directed by the regional director after consideration of the particular circumstances of a case, a pre-election conference shall be held in each case no later than 24 hours before the commencement of the election. Subject to the above limitation, the Board agent assigned to the election shall have discretion to set the time and place of the pre-election conference after consultation with the parties.

§20352. Eligibility.

(a) Those persons eligible to vote shall include:

(1) Those agricultural employees of the employer who were employed at any time during the employer's last payroll period which ended prior to the filing of the petition, except that if the employer's payroll as determined above is for fewer than five working days, eligible employees shall be all those employees who were employed at any time during the five working days immediately prior to the filing of the petition;

(2) Employees who are absent from work during the applicable payroll period but who are receiving pay for that period from the employer, as in the case of employees on paid sick leave or paid vacation;

(3) Employees who would have been on the payroll during the applicable payroll period but for the employer's unfair labor practices; and

(4) Eligible economic strikers.

(b) The following are ineligible to vote:

(1) Supervisors as defined in Labor Code Section 1140.4(j);

(2) Guards employed to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises;

(3) Managerial employees;

(4) Confidential employees; and

(5) The parent, child, or spouse of the employer or of a substantial stockholder in a closely held corporation which is the employer.

§20355. Challenges.

(a) Any party or the Board agent may challenge, for good cause shown, the eligibility of any person to cast a ballot. Good cause shown shall consist of a statement of the grounds for the challenge, which shall be supported by evidence submitted subsequent to the closing of the polls. Any challenge must be asserted prior to the time that the prospective voter receives a ballot and be limited to one or more of the following grounds:

(1) The prospective voter is a supervisor as defined by Labor Code Section 1140.4(j);

(2) The prospective voter was not employed in the appropriate unit during the applicable payroll period;

(3) The prospective voter is employed by his or her parent, child, or spouse, or is the parent, child, or spouse of a substantial stockholder in a closely held corporation which is the employer;

(4) The prospective voter was employed or his or her employment was willfully arranged for the primary purpose of voting in the election in violation of Labor Code Section 1154.6;

(5) The prospective voter is a guard employed primarily to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's property;

(6) The prospective voter is a managerial or confidential employee;

(7) The prospective voter is not an agricultural employee of the employer as defined in Labor Code Section 1140.4(b); or

(8) The prospective voter's name does not appear on the eligibility list.

(b) Failure to challenge the eligibility of a person to vote prior to his receiving a ballot shall constitute a waiver of the right to challenge that person's vote and any post-election objection raising the issue of the eligibility to vote of a person whose ballot was not challenged at the election shall be dismissed.

(c) Prospective voters, including those whose names appear on the eligibility list, must present identification in order to vote. Identification may be in the form of an employer-provided identification card, a payroll check stub of that employer, driver's license, "green card," social security card, or any other identification which the Board agent, in his or her discretion, deems adequate. The Board agent will challenge any prospective voter who fails to supply identification as required above, or any prospective voter concerning whom the Board agent concludes there is a substantial question of identity.

(d) Subsequent to the balloting but prior to the tally of ballots, the Board agent supervising the election shall have discretion to rule upon challenged ballots on which all parties agree that there is no factual or legal dispute, or to accept withdrawal of any challenge by the party making the challenge.

§20360. Tally of Ballots.

(a) As soon as possible after completion of the balloting, a Board agent shall count the ballots and shall prepare both a tally of ballots and a list of the names of each person whose ballot was challenged, along with the basis for the challenge and the name of the party making the challenge, and shall furnish both the tally and the list to representatives of all parties who are present. If the ballots are not to be counted immediately after the conclusion of the election, the Board agent shall give advance notice to representatives of all parties of the time and place at which the ballots will be counted. It is the obligation of all parties who are notified of the time and place of the ballot count to have a representative present at the time ballots are counted who is authorized to receive a copy of the tally. The time for filing objections under Labor Code Section 1156.3(c) shall begin to run as soon as the count is completed and the tally prepared, regardless of whether or not all parties are present to receive a copy of the tally.

(b) Notwithstanding any other provision of these rules, the Board shall have the authority acting pursuant to a petition under Labor Code Section 1156.3(c), or on its own motion, without hearing, to issue an amended tally of ballots and appropriate certification in any election in which the Board has acted to resolve issues with respect to challenged voters or to correct mathematical errors in the previous tally of ballots. Except as provided in section 20375(d), nothing in this rule shall be deemed to extend the period of time for filing a petition under Labor Code Section 1156.3(c).

(c) Whenever it appears necessary, in order to effectuate the purposes and policies of the Act, the Board or the regional director may direct that the ballots cast in an election be impounded. When the ballots are so impounded, the election will not be deemed complete until a

ballot count has been conducted and the Board agent has furnished representatives of the parties who are present with a tally and a list of challenged ballots in accord with subsection (a) above.

§20363. Post-Election Determination of Challenges.

(a) If the tally of ballots discloses that the challenged ballots are sufficient in number to affect the outcome of the election, the regional director shall conduct such investigation as he or she deems necessary to determine the eligibility of the challenged voters, including giving all parties an opportunity to present evidence on each of the challenges. Thereafter, the regional director shall issue to the Board a report containing his or her conclusions and recommendations and a detailed summary of the facts underlying them. A copy of the regional director's report shall be served on all parties. Where, after investigation, the regional director deems it appropriate, he or she may issue a notice of hearing on those challenged ballots which cannot be resolved by investigation and may submit his or her report to the Board containing the conclusions and recommendations and summary of supporting facts on all other challenges. A copy of the notice of hearing shall be served on all parties. Such hearing will be in accord with section 20370.

(b) The conclusions and recommendations of the regional director, set forth in the report provided for in (a) above, shall be final unless exceptions to the conclusions and recommendations are filed with the executive secretary by personal service within five days or by deposit in registered mail postmarked within five days following service upon the parties of the regional director's report. An original and six copies of the exceptions shall be filed and shall be accompanied by seven copies of declarations and other documentary evidence in support of the exceptions. Copies of any exceptions and supporting documents shall be served pursuant to section 20166 on all other parties to the proceeding and on the regional director and proof of service shall be filed with the executive secretary along with the exceptions.

(c) In serving exceptions and supporting documents on other parties pursuant to subdivision (b) above, the excepting party shall have the option of serving a detailed statement of facts in lieu of the declarations. This detailed statement of facts shall describe the contents of declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the exceptions at an evidentiary hearing. An excepting party electing to serve a detailed statement of facts on other parties shall also file the original and six copies of this statement with the executive secretary together with the declarations.

(d) In any case in which exceptions are filed to a regional director's recommendations for the disposition of challenged ballots pursuant to subsection (b) above, the record on review by the Board shall consist of: the petition pursuant to Labor Code Section 1156.3(a), the notice and direction of election, the tally of ballots, the regional director's report on challenged ballots, and the exceptions thereto, along with supporting evidence and briefs as required in subsection (b) above.

§20365. Post-Election Objections Procedure.

(a) Time for filing. Within five days after an election, any person may, pursuant to Labor Code Section 1156.3(c), file with the Board a signed petition asserting that allegations made in the election petition filed pursuant to Labor Code Section 1156.3(a) were incorrect, or asserting that the Board or regional director improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election. Except as provided in subsections (1), (2) and (3) below, the five-day period begins to run when the election ends. The election ends when the ballots have been counted and a final tally of ballots issues.

(1) If challenged ballots are outcome-determinative or the ballots are impounded, the election ends when the polls close, and the five-day period for filing election objections begins to run at that time. Neither the existence of a determinative number of challenged ballots nor the impoundment of ballots shall extend the period for filing objections, and the subsequent issuance of a revised tally or delayed tally shall not reopen the period for filing objections.

(2) The time for filing objections after a rerun election is governed by section 20372(c).

(3) The time for filing objections after a run-off election is governed by section 20375(d).

(b) An objections petition shall be filed by personal service on the executive secretary, or by registered or certified mail postmarked within the five-day period. No extensions of time for filing objections shall be permitted, and no amendments to objections petitions shall be permitted for any reason after the five-day filing period has elapsed.

(c) An objections petition filed with the executive secretary shall consist of the original and six copies of the following: the petition pursuant to Labor Code Section 1156.3(c); a detailed statement of facts and law relied upon, as required by subsection (1) below, or declarations in support of the petition, as required by subsection (2) below; a declaration of service upon all other parties, including the regional director, as provided in section 20166, of the objections petition and any detailed statement of facts and law supporting declarations, and seven copies of the following: petition for certification, the notice and direction of election, and the tally of ballots. A party exercising the option provided by subsection (2)(D) below to serve on other parties a detailed statement of facts in lieu of declarations shall file with the executive secretary the original and six copies of said statement and a declaration of service of the statement upon all other parties, as provided in section 20166.

(1) A party objecting to an election on the grounds that the Board or the regional director improperly determined the geographical scope of the bargaining unit, or that the allegations made in the petition filed pursuant to Labor Code Section 1156.3(a) were

incorrect, shall include in its petition a detailed statement of the facts and law relied upon.

(2) A party objecting to an election on the grounds that the election was not conducted properly, or that misconduct occurred affecting the results of the election shall attach to the original and each copy of the petition a declaration or declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election.

(A) If more than five declarations are submitted with a petition, each objection therein shall contain a reference, by number, to the declaration or declarations offered in support of that objection.

(B) The facts stated in each declaration shall be within the personal knowledge of the declarant. The details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election shall be set forth with particularity.

(C) Allegations of misconduct shall include identification of the person or persons alleged to have engaged in the misconduct and their relationship to any of the parties, a statement of when and where the misconduct occurred; and a detailed description of the misconduct including, if speech is complained of, the contents of what was said.

(D) Copies of the declarations and supporting documents or exhibits shall be served upon all other parties with the objections petition, provided that, at the option of the objecting party, a detailed statement of facts may be substituted for the declarations. This detailed statement of facts shall describe the contents of declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the objections at an evidentiary hearing. An objecting party electing to serve a detailed statement of facts on other parties shall also file the original and six copies of this statement with the executive secretary together with the declarations.

(3) Documents and exhibits offered in support of the objections petition shall be identified and authenticated.

(4) All declarations shall state the date and place of execution, and shall be signed and certified by the declarant to be true and under penalty of perjury, which certification shall be substantially in the following form: "I certify (declare) under penalty of perjury that the foregoing is true and correct."

(5) No party may allege as grounds for setting aside an election its own conduct or the conduct of its agents.

(d) Disposition of objections petitions. The executive secretary shall dismiss any objections petition or any portion of such petition which does not satisfy the requirements of subsections (a), (b), and (c). Such action of the executive secretary may be reviewed by the Board pursuant to section 20393.

(e) With respect to any portion of the petition not dismissed pursuant to subsection (d) above, the executive secretary or the investigative hearing examiner appointed by the executive secretary to handle the case may:

(1) Direct any party to submit evidence through declarations or documents;

(2) Order the inspection of documents by Board agents or by the parties;

(3) Direct any party to submit an offer of proof;

(4) Obtain declarations from Board agents or other persons;

(5) Conduct investigatory conferences with the parties for the purpose of exploring and resolving factual or legal issues;

(6) Dismiss any portion of the petition which, after investigation and on the basis of applicable precedent, is determined not to be a basis for setting the election aside;

(7) Recommend to the Board that an election be set aside if, after an investigation, it appears on the basis of applicable precedent it would be appropriate to do so, and there are no material factual issues in dispute. Such recommendation shall be in writing and shall be served on the parties pursuant to section 20164. Parties shall have 14 days from service of the recommendation to file with the Board an original and six copies of a statement of objection to the recommendation accompanied by a statement of reasons for objection or a supporting brief.

(8) Recommend novel legal issues to the Board for consideration and decision. Such recommendation of issues shall be in writing and served on the parties. Parties shall have 14 days from service to submit the original and six copies of briefs to the Board on the legal issues raised.

(f) An order of the executive secretary dismissing portions of the petition after investigation shall be in writing accompanied by a statement of reasons, shall be served on all parties pursuant to section 20164, and shall be subject to Board review pursuant to section 20393.

(g) The executive secretary shall direct an investigatory hearing pursuant to section 20370 if it appears that there are substantial and material factual issues in dispute. The hearing

shall be strictly limited to the issues set forth in the executive secretary's notice of hearing. Hearings of more than one day's duration shall continue on the next business day and each day following until completed. Requests for continuance shall be granted only in extraordinary circumstances.

§20370. Investigative Hearings--Types of Hearings and Disqualification of IHE's.

(a) The executive secretary shall appoint an investigative hearing examiner to conduct an investigative hearing on objections filed pursuant to section 20365, on challenges pursuant to section 20363, on extensions of certifications pursuant to section 20382, on petitions seeking clarification of a bargaining unit or amendment of a certification pursuant to section 20385, on petitions to revoke certifications on alleged violations of access rights pursuant to section 20900, or on any other representation matter. No person who is an official or an employee of a regional office shall be appointed to act as an investigative hearing examiner. An investigative hearing examiner is subject to disqualification on the same basis and in the same manner as provided in section 20263 for administrative law judges in unfair labor practice proceedings. If the investigative hearing examiner assigned to a hearing becomes unavailable for any reason at any time between the beginning of the hearing and the issuance of the decision, the executive secretary may designate another investigative hearing examiner for such purpose.

Investigative Hearings--Powers of IHE's

(b) The parties shall have the right to participate in such investigative hearing as set forth in Labor Code Sections 1151, 1151.2, and 1151.3. Any party shall have the right to appear at such investigative hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses and to introduce into the record documentary evidence, except that participation of any party shall be limited to the extent permitted by the investigative hearing examiner, and provided further, that documentary evidence shall be submitted in duplicate. The investigative hearing examiner shall have the duty to inquire fully into all matters in issue and to obtain a full and complete record. In furtherance of this obligation, the investigative hearing examiner shall have all of the powers that an administrative law judge has in an unfair labor practice proceeding as enumerated in section 20262, where applicable.

Investigative Hearings--Necessary Parties

(c) The necessary parties to an investigative hearing are the petitioner, the employer, and any other labor organization which has intervened pursuant to section 20325. The regional director or a designated representative of the regional director may participate in an investigative hearing to the extent necessary to ensure that the evidentiary record is fully developed and that the basis for the Board's action is fully substantiated

Investigative Hearings--Adverse Inference

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of

such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded. The refusal of a witness at a hearing to answer any question which has been ruled to be proper may be grounds for striking the portions of the testimony of such witness on related matters and/or for making such inferences as may be proper under the circumstances, unless the refusal to answer is privileged.

Investigative Hearings--Time of Hearings and Continuance During Hearing

(e) Hearings may be held any time that the investigative hearing examiner considers appropriate. Hearings shall continue from day to day until completed or recessed. Once a hearing has commenced, continuances or recesses will not be granted except in extraordinary circumstances, and then only by order of the executive secretary or, for recesses of two (2) working days or less, by order of the investigative hearing examiner.

(f) The hearing shall be recorded by an appropriate means to be designated by the executive secretary. In any case where the investigative hearing examiner is directed to make a tape recording of the hearing, copies of the tape recording shall be made available to any party at cost. Unless otherwise directed by the executive secretary, the tape recording will not be transcribed.

(g) After any party to a representation hearing has completed the presentation of its evidence, any other party, without waiving its right to offer evidence not yet produced in support of its own position, may move for decision in its favor in whole or in part in the same manner and subject to the same inferences, standard, and review as provided in section 20243 for motions for decision in unfair labor practice cases.

(h) At the close of the taking of testimony, any party may request a reasonable period for closing oral argument on the record. Post-hearing briefs shall not be filed unless the investigative hearing examiner determines that, because of the complexity of the issues, he or she requires further briefs as an aid to decision, and then only upon such terms as the investigative hearing examiner shall direct, but shall, in any event, conform to the limitations contained in section 20370(j)(2).

(i) Within a reasonable time after the close of taking of testimony or within a specific time as may be determined by the executive secretary, the investigative hearing examiner shall issue an initial decision including findings of fact, conclusions of law, a statement of reasons in support of the conclusions, and a recommended disposition of the case. In the absence of timely exceptions, as set forth in subsection (j) below, such decision shall become the decision of the Board. Unless expressly adopted by the Board, the statement of reasons in support of the decision shall have no effect as precedent.

(j) Within 10 days after service of the investigative hearing examiner's decision, or within

such other period as the executive secretary may direct, a party may file with the executive secretary the original and six copies of the exceptions and a brief in support of the exceptions to the investigative hearing examiner's decision accompanied by proof of service on all parties pursuant to section 20166.

(1) The brief in support of the exceptions shall state the grounds for each exception, shall identify by page number that part of the investigative hearing examiner's decision to which exception is taken, and shall cite to the portions of the record which support the exception. If the record of the hearing consists of a tape recording made by the investigative hearing examiner, exceptions to findings of fact shall be accompanied by a transcription of those portions of the tape recording relied upon in addition to the references to the location number on the tape where the cited portions occur.

(2) A brief in support of exceptions which exceeds 20 pages shall contain a table of authorities cited. This brief shall not exceed 50 pages in length, except that upon prior request the executive secretary may permit longer briefs where necessary to address factual or legal issues. Each page shall be 8 1/2 inches wide by 11 inches long and shall contain 28 double-spaced lines of pica type. If post-hearing briefs are incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the exceptions brief. Unless permission to file a brief exceeding the page limitations specified above has been obtained from the executive secretary in advance, only the first 50 pages of briefs in support of the exceptions shall be accepted and filed. Anything in excess of 50 pages will be returned to the party and will not be considered by the Board.

(3) Within seven days following the filing of exceptions, or within such other period as the executive secretary may direct, a party opposing the exceptions may file an original and six copies of a brief in answer to the exceptions, not to exceed 50 pages in length. Each page shall be 8 1/2 inches wide by 11 inches long and shall contain 28 double-spaced lines of pica type. If post-hearing briefs are incorporated by reference, the portions incorporated shall be identified by page number and shall count as part of the 50-page limitation on the answering brief. The answering brief shall be accompanied by a proof of service on all other parties as required by section 20166. Unless permission to file a brief exceeding the page limitations specified above has been obtained from the executive secretary in advance, only the first 50 pages of briefs in answer to the exceptions shall be accepted and filed. Anything in excess of 50 pages will be returned to the party and will not be considered by the Board.

(k) In any case the Board may direct that the record, which shall include the hearing transcript or recorded tapes and all exhibits, be transferred directly to the Board for decision, accompanied by the report from the investigative hearing examiner, if any, and by such briefs from the parties as the Board may direct. If there is no conflict in the evidence to be offered at the hearing scheduled before the investigative hearing examiner, the parties may, where appropriate, file with the Board a stipulated set of facts and their briefs, and request permission

to make oral argument concerning matters of law.

(l) Nothing contained in this section shall be construed as controlling a proceeding in which concurrent unfair labor practice charges under Chapters 4 and 6 of the Act have been consolidated with a representation proceeding under Chapter 5 of this Act. The procedures and rights of the parties in such a consolidated proceeding are set forth in Chapter 2 of these regulations covering unfair labor practice proceedings.

(m) The provisions of section 20250 with respect to issuance, service, revocation, and enforcement of subpoenas and notices to appear or produce shall apply to hearings conducted under this section, except that applications for subpoenas made prior to the hearing pursuant to section 20250(a) shall be filed with the appropriate regional director, and petitions to revoke subpoenas or notices which are made prior to the hearing pursuant to section 20250(b) should be filed with the executive secretary who shall refer them to the investigative hearing examiner. References in section 20250 to action by the administrative law judge or by the general counsel shall, for purposes of application of that section to proceedings under this section, be deemed to refer to actions of an investigative hearing examiner or the executive secretary respectively.

(n) The procedures for grants of immunity to witnesses set forth in section 20251 shall apply in representation cases, except that references in that section to action by the administrative law judge shall, for purposes of application of that section to proceedings in representation cases, be deemed a reference to actions of an investigative hearing examiner.

(o) The procedures set forth in section 20246 of these regulations shall apply to the taking of depositions of witnesses in representation cases, except that references in that section to action by the administrative law judge shall, for purposes of application of that section to proceedings in representation cases, be deemed to refer to actions of an investigative hearing examiner and references to the issuance of a complaint shall be deemed to refer to proceedings covered by this section.

(p) The procedures set forth in section 20274 of these regulations shall apply to the disclosure of statements of witnesses in representation cases, except that references in that section to action by the administrative law judge shall, for purposes of application of that section to proceedings in representation cases, be deemed to refer to actions of an investigative hearing examiner.

(q) In any case in which a hearing is conducted pursuant to this section, the record on review by the Board shall consist of: the petition or petitions pursuant to Labor Code Sections 1156.3(a) or 1156.7(c) or (d), or the petition or petitions filed pursuant to sections 20363, 20365, 20382, or 20385 of these regulations, any petitions for intervention pursuant to Labor Code Section 1156.3(b), the notice and direction of election, the tally of ballots, the order setting the matter for hearing, motions, responses, rulings, the official record of the hearing, exhibits, stipulations, depositions, post-hearing briefs, the decision of the investigative hearing examiner, and the exceptions, cross-exceptions or opposition to exceptions, along with supporting briefs as

provided in section 20370(l).

(r) An attorney or representative who has made a general appearance for a party in a proceeding governed by this Chapter may withdraw as follows: (i) upon a written consent executed by both the attorney or representative and by the client or the attorney or representative who will substitute into the proceedings, which shall be filed with the executive secretary; or (ii) by the order of the executive secretary or the Board, if the matter is then pending before it, upon the application of the attorney or representative, after notice from one to the other. Withdrawal or substitution shall be permitted unless to do so would result in serious prejudice to the other parties to the proceeding. Any application or consent filed pursuant to (i) or (ii) above shall contain the address of the client or new attorney or representative for the service of subsequent pleadings and papers. Any application filed pursuant to (ii) above shall, without compromising the confidentiality of the attorney-client relationship, if any, state in general terms the reason for the application.

(s) The provisions of sections 20240 and 20241 with respect to motions, rulings and orders, and section 20242 with respect to appeals therefrom shall apply to all motions filed with the executive secretary prior to or after the close of hearing, and the procedure set forth in section 20241 shall apply to all motions filed with the investigative hearing examiner from the opening to the close of the hearing.

§20372. Rerun Elections.

(a) The Board may direct a rerun election where circumstances make it physically impossible to determine the outcome of the first election. A rerun election shall be conducted, if possible, within three days of the initial election and the original eligibility list shall be used unless the regional director otherwise directs.

(b) If an objection or objections to an election are filed by a party or parties and if the regional director determines that it will further the purpose of the Act to nullify the first election and conduct a rerun election, then a rerun election may be conducted upon the written consent of all the parties.

(c) In any rerun election held under this section, the time for filing objections to the rerun election shall be measured in accordance with section 20365 from the time of the rerun election.

§20375. Runoff Elections.

(a) Except as provided below, in any election where no party receives a majority of the valid votes cast, a runoff election between the two parties receiving the greatest number of votes shall be held within seven days from the date of the initial election. All persons eligible to vote in the initial election shall be eligible in the runoff election.

(b) Whenever challenged ballots determine whether or not a runoff will be necessary, or determine who will be parties to the runoff election, the regional director may proceed as follows if it appears that an expedited procedure will enable the Board to conduct a runoff election during the same period of peak employment:

(1) The regional director may conduct an investigation and issue a report on challenged ballots within 48 hours or such additional time as extraordinary circumstances necessitate, file the report with the executive secretary, and contact the parties by telephone or telegram to inform them that the report is available to them.

(2) Any party wishing to except to recommendations in the regional director's report shall file such exceptions with the executive secretary and serve a copy in the appropriate regional office within 48 hours from issuance of the report. Exceptions need not be accompanied by a brief but whether or not a brief is submitted the basis for each exception must be stated in detail.

(3) Upon the expiration of the 48-hour period for filing exceptions, the regional director shall consider any exceptions which have been filed and may reconsider his or her recommendations and prepare and issue a brief supplemental report setting forth any changes in the original resolution. The regional director shall then open and count the challenged ballots in accordance with his or her recommendations, prepare and issue an amended tally and notify the parties whether a runoff election is required, and if so, which parties will appear on the ballot. The runoff election shall be conducted as soon as practicable after issuance of the amended tally, at a time and place designated by the regional director.

(c) If the ballot in the initial election provided for three or more choices, and, after determinative challenged ballots are resolved, none of the choices receives a majority of the votes cast, and

(1) the number of votes cast is equally divided among the several choices, or

(2) the same number of votes was cast for two choices, but that number is less than the number cast for the third choice, the regional director shall declare the initial election a nullity and set it aside. The regional director shall conduct another election within two days, and the ballot in that election shall contain the same choices as appeared on the ballot in the initial election. Only one such additional election may be held.

(d) In cases in which a runoff election is held, election objections filed pursuant to Labor Code Section 1156.3(c) and section 20365 shall be filed within five days of the runoff election. If the regional director declares after the initial election that a runoff election appears necessary, but after resolution of challenged ballots finds that no runoff election should be held, objections to the initial election shall be due within five days from the determination that no runoff will be held. Any exceptions to the regional director's resolution of challenges under subsection (b)

above may be filed as objections under section 20365. Any such objections shall be accompanied by the regional director's report or reports and any exceptions filed thereto, supplemented by a brief and evidence in support of the exceptions.

(e) Only one runoff election shall be held in any case. If a runoff election results in a second tie vote, the election shall be deemed void, and no certification of results shall issue. The provisions of Labor Code Section 1156.5 shall not apply to bar the direction of a new election pursuant to a new petition after an election has been voided under this subsection.

§20377. Elections Under Strike Circumstances.

(a) Where a petition for certification alleges that a majority of employees are engaged in a strike at the time of the filing, the regional director shall conduct an administrative investigation to determine whether such a majority exists, and shall notify the parties of his or her determination. Where the regional director determines that a majority of employees in the bargaining unit were on strike at the time of filing, he or she shall exercise all due diligence in attempting to hold an election within 48 hours of the filing; however, this shall not be construed to require that an election be held in 48 hours. The holding of elections under strike circumstances takes precedence over the holding of other elections.

(b) The procedures set forth in Chapter 3 of these Regulations shall apply to the conduct of elections under this section insofar as is practicable under strike circumstances. The regional director shall have authority to establish reasonable procedures for the conduct of expedited elections under strike circumstances. In particular, upon notice to and consultation with the parties, he or she may establish procedures for expediting the receipt of information necessary to evaluate showing of interest and timeliness of the petition pursuant to Labor Code Section 1156.4; and may reasonably shorten deadlines specified in sections 20300(j)(2) and (4), 20310(d), 20325(e), and 20350(d) of these Regulations.

(c) Any party who contends that a 48-hour election is improper shall notify the regional director of its contention and shall submit evidence in the form of written declarations under penalty of perjury supporting the contention and the manner in which the party would be prejudiced. The notification and submission of evidence must be made prior to the pre-election conference. Absent such notice, the regional director's determination shall not be reviewable in post-election objections under section 20365.

§20380. Certification.

The executive secretary shall issue certification of the election after a secret ballot election conducted pursuant to this part:

(a) Upon expiration of five days after service of the tally of ballots in an election, if no petition objecting to the election has been filed pursuant to section 20365 and if any challenged ballots are not sufficient in number to be determinative of the outcome of the election;

(b) If objections to the conduct of the election are filed or if challenged ballots are sufficient in number to affect the outcome of the election, upon resolution of objections pursuant to sections 20365 and 20370, unless the Board determines that the election shall be set aside, and upon resolution of determinative challenges, if any, pursuant to sections 20363 and 20370, and in either case, after expiration of the period for requests for review under section 20393, or, if such a request for review is filed, after ruling by the Board on such request.

§20382. Extension of Certification, Labor Code Section 1155.2(b).

(a) A labor organization certified under section 20380 may file a petition for extension of the certification not earlier than the 90th day nor later than the 60th day preceding the expiration of a 12-month period following the date of certification. The sole ground for the petition is that the labor organization has requested the employer to bargain, and the employer has failed to bargain in good faith.

(b) The petition for extension of certification shall be submitted under oath and contain the following:

(1) The date of certification;

(2) A description of the progress of negotiations between the labor organization and the employer, including, but not limited to, the requests made by the union to bargain, the dates of meetings between the labor organization and the employer, and the conduct that the labor organization claims constitutes a failure to bargain in good faith;

(3) Copies of documents and correspondence that support the description of the progress of the negotiations, if relevant; and

(4) The amount of time for which the labor organization requests the certification be extended.

(c) An original and six copies of the petition for extension of certification shall be filed with the executive secretary accompanied by proof of service on the employer pursuant to section 20166.

(d) An employer shall file a response to the petition for extension of certification within 10 days of service of the labor organization's petition. The petition shall be submitted under oath and contain a statement of the following:

(1) Whether the employer agrees with the labor organization's description of the progress of the negotiations;

(2) If not, the employer's description of the progress of the negotiations, along with any relevant documentation; and

(3) Whether the employer objects to an extension of the certification.

(e) An original and six copies of the response to the petition for extension of certification shall be filed with the executive secretary, along with proof of service on the labor organization. If the response is not filed within 10 days, the Board will rule on the petition alone.

(f) The Board shall either grant an extension of certification for a specified time following the end of the first twelve months after the original certification, deny the petition, or notice a hearing. Hearings noticed under this section shall be conducted according to the provisions of section 20370.

(g) The granting of a petition for extension of certification shall not constitute evidence that an unfair labor practice has been committed. A Board order extending a certification shall not be admissible in an action on an unfair labor practice proceeding under Labor Code Section 1153(e).

§20385. Clarification of Bargaining Unit; Amendment of Certification.

(a) A petition seeking clarification of an existing bargaining unit in order to resolve questions of unit composition which were left unresolved at the time of certification or were raised by changed circumstances since certification may be filed by a labor organization or by an employer where no question concerning representation exists. A petition seeking amendment of a certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization or in the site or location of the employer, may be filed by a labor organization or by an employer where no question concerning representation exists.

(b) A petition for clarification of an existing bargaining unit or for amendment of a certification shall contain:

(1) the name and address of the petitioner;

(2) the name and address of the employer, the certified bargaining representative, and any other labor organization which claims to represent any employees affected by the proposed clarification or amendment;

(3) a description of the existing certification, including job classifications of employees and location of property covered by the certification;

(4) a description of the proposed clarification or amendment and a statement of reasons why petitioner seeks clarification or amendment; and

(5) any other relevant facts.

(c) A petition under this section shall be filed in the regional office which conducted the election leading to certification, and petitioner shall serve, in the manner provided in sections 20160 and 20166, the executive secretary, all other parties, and any organization named in subsection (b)(2) above. The regional director shall conduct such investigation of the issues raised by the petition as he or she deems necessary. Thereafter the regional director shall issue to the Board a report containing his or her conclusions and recommendations and a detailed summary of the facts underlying them. A copy of the regional director's report shall be served on all parties and any organization named in subsection (b)(2) above. Where, after investigation, the regional director deems it appropriate, he or she may, rather than issuing an investigative report, request permission from the executive secretary to issue a notice of hearing on the question of whether the unit clarification petition or the amendment of certification should be granted or denied. A copy of the notice of hearing shall be served on all parties. Such hearings will be in good accord with section 20370.

(d) The conclusions and recommendations of the regional director in the report provided for in subsection (c) above shall be final unless exceptions to the conclusions and recommendations are filed with the executive secretary by personal service within five days, or by deposit in registered mail postmarked within five days following service upon the parties of the regional director's report. An original and six copies of the exceptions shall be filed and shall be accompanied by seven copies of declarations and other documentary evidence in support of the exceptions. Copies of any exceptions and supporting documents shall be served pursuant to section 20166 on all other parties to the proceeding and on the regional director, and proof of service shall be filed with the executive secretary along with the exceptions.

§20390. Petitions Filed Pursuant to Labor Code Section 1156.7(c) and (d)--Decertification and Rival Union Petitions.

(a) Where the incumbent union presently has a collective bargaining agreement with the employer, the petition shall contain an allegation that the agreement will expire within the next twelve months or has been in existence for more than three years, and shall be accompanied by evidence of support by 30% or more of the employees currently employed in the bargaining unit.

(b) Where the incumbent union presently does not have a collective bargaining agreement with the employer, the petition shall contain an allegation to that effect, and shall be accompanied by evidence of support by a majority of the employees currently employed in the bargaining unit.

(c) The evidence of support for the petition may be in the form of signatures on a petition or, in the case of a rival union petition, on authorization cards or on a petition. In either case, each signature must be dated.

(d) All petitions for decertification and rival union petitions shall contain the following:

(1) The name, address, and phone number of the petitioner and its affiliation, if any.

(2) The name, address, and phone number of a representative of the petitioner authorized to make agreements with the Board and the parties and to accept service of papers.

(3) The name and address of the incumbent union.

(4) The name, location, and mailing address of the employer.

(5) The nature of the employer's agricultural commodity or commodities encompassed by the unit.

(6) A description of the existing bargaining unit.

(7) The approximate number of employees currently employed in the bargaining unit.

(8) A statement whether a strike is in progress in the unit involved and, if so, the approximate number of employees participating and the date the strike began.

(9) A statement of which languages, other than English and Spanish, the petitioner requests be included on the ballots, and the approximate number of employees requiring such ballots.

(10) An allegation that the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

(11) An allegation that no valid election has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.

(12) An allegation that the Board did not certify the incumbent union within the 12 months immediately preceding the filing of the petition.

(e) The procedures set forth in Chapter 3 of these regulations for the service and processing of petitions for certification, election procedures, and post-election procedures shall be applicable to decertification and rival union petitions, except that service of the petition also shall be made upon an officer or director of the incumbent union, or upon an agent of the union authorized to receive service of papers. If service is made by delivering a copy of the petition to

anyone other than an officer, director, or agent of the union authorized to receive service of papers of the employer, the petitioner shall immediately send a telegram or facsimile transmission to the officer, director, or agent of the union declaring that a petition is being filed and stating the name and location of the person actually served and shall file with the regional office proof that the telegram or facsimile transmission was sent and received.

§20393. Requests for Review; Requests for Reconsideration of Board Action; Requests to Reopen the Record.

(a) Dismissal of a representation petition, cross-petition, or intervention petition by a regional director pursuant to section 20300(i), or dismissal by the executive secretary pursuant to section 20365(f)(6) of an objections petition filed pursuant to Labor Code Section 1156.3(c), in whole or in part, may be reviewed by the Board pursuant to Labor Code Section 1142(b), upon a written request for review filed by the party whose petition was dismissed. The request for review shall be filed with the Board within five days of service of the dismissal upon the party making the request. Requests for review of other delegated action reviewable under Labor Code Section 1142(b), except those specifically provided for in subsection (b), *infra*, shall also be filed with the board within five days of service of notice of the action for which review is requested. Such requests shall be filed in accordance with the provisions set forth in section 20160(a)(2), and served in accordance with the provisions set forth in sections 20166 and 20168. The request shall set forth with particularity the basis for the request and shall be accompanied by six copies of the following:

(1) the evidence and legal arguments which the party seeking review contends support the request;

(2) the representation petition if the action to be reviewed concerns the dismissal of a representation, intervention, or cross-petition, or the dismissal, in whole or in part, of election objections;

(3) the petition pursuant to Labor Code Section 1156.3(c) where applicable;

(4) the regional director's notice of dismissal of the representation petition, or notice of other action reviewable under Labor Code Section 1142(b), and statement of reasons therefor, where applicable; and

(5) evidence that the aforementioned material has been served upon all parties pursuant to sections 20166 and 20168.

(b) Review of any other actions of a regional director or his or her agent pursuant to the powers which may be delegated to him or her under Labor Code Section 1142(b) to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question of representation exists, and to direct an election shall be by means of a petition filed pursuant to Labor Code Section 1156.3(c) and sections 20363, 20365 and 20370.

(c) A party to a representation proceeding may, because of extraordinary circumstances, move for reconsideration or reopening of the record, after the Board issues a decision or order in the case. A motion under this section must be filed with the Board within five days of service of the decision or order upon the party making the request, in accordance with the provisions set forth in section 20160(a)(2), and served on the parties, in accordance with the provisions set forth in sections 20166 and 20168. A motion for reconsideration or reopening of the record shall set forth with particularity the basis for the motion and legal argument in support thereof and shall be accompanied by proof of service of the motion and accompanying documents upon all parties as provided in sections 20166 and 20168. Only one request for reconsideration of or to reopen the record for any decision or order will be entertained. A motion filed after the issuance of a decision of the Board may alternatively request reconsideration and reopening. A motion filed under this section shall not operate to stay the decision and order of the Board.

(d) The Board, in its discretion, may request a response from the opposing party or parties prior to granting or denying a request for review under subsection (a) above or a request for reconsideration under subsection (c) above. Where a request for review or a request for reconsideration is granted by the Board, the Board shall serve notice thereof upon all parties as provided in section 20164, and shall set a reasonable period within which the opposing party or parties may file a response. Unless the Board requests it to do so, the party initially requesting review or reconsideration may not submit any material in addition to the petition for review or for reconsideration and its supporting documents.

(e) In any case in which a request for review is filed pursuant to this section of a dismissal of a representation petition, cross-petition or intervention petition by a regional director, the record on review by the Board shall consist of: the petition pursuant to Labor Code Section 1156.3(a), the cross-petition or intervention petition where applicable, the regional director's dismissal letter, and the request for review and supporting evidence and briefs.

(f) In any case in which a request for review is filed pursuant to this section of a dismissal by the executive secretary of a petition pursuant to Labor Code Section 1156.3(c), in whole or in part, or in any case in which a statement of objections is filed pursuant to section 20365(f)(7) to the executive secretary's recommendation to set aside an election without hearing, the record on review by the Board shall consist of: the petition pursuant to Labor Code Section 1156.3(a), the notice and direction of election, the tally of ballots, the objections petition along with supporting documents, the executive secretary's order and statement of reasons as required by section 20365(h), and the request for review or statement of objections and any supporting documents and briefs.

Chapter 4. Mandatory Mediation and Conciliation

§ 20400. Filing of Declaration Requesting Mandatory Mediation and Conciliation

(a) Where the certification issued prior to January 1, 2003:

A declaration pursuant to Labor Code section 1164, subdivision (a)(1) may be filed with the Board by either the agricultural employer or the certified labor organization at any time at least 90 days after a renewed demand to bargain, as defined in subdivision (2) below. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The declaration shall be signed under penalty of perjury by an authorized representative of the filing party, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, and shall state that (A) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (B) the employer has committed an unfair labor practice, describing the nature of the violation, and providing the corresponding Board decision number or case number, (C) the parties have not previously had a binding contract between them, and (D) the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements and establishes the date of the renewed demand to bargain.

(1) The unfair labor practice referred to above is one where a final Board decision has issued or where there is a settlement agreement that includes an admission of liability.

(2) The renewed demand to bargain referred to above is one that occurred on or after January 1, 2003.

(b) Where the certification issued after January 1, 2003:

A declaration pursuant to Labor Code section 1164, subdivision (a)(2) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 180 days after the initial request to bargain by either party following the certification. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, shall provide the date of the initial request to bargain, and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.

(c) For the purpose of determining the number of declarations permitted to be filed by a

labor organization, the term "party" as used in Labor Code section 1164.12 shall refer to the labor organization named in the Board's certifications.

§ 20401. Answer to Declaration

(a) Within three (3) days of service of a declaration, the other party to the collective bargaining relationship (or alleged bargaining relationship) may file an answer to the declaration. The answer shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The answer shall be signed under penalty of perjury by an authorized representative of the filing party, and shall identify any statements in the declaration that are disputed. In addition, the answer shall be accompanied by any documentary or other supporting evidence. If it is claimed that the employer has not engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of the declaration seeking referral to mandatory mediation, payroll records sufficient to support the claim shall be submitted with the answer. Payroll records shall be submitted in electronic form if kept in that form in the normal course of business.

(b) All statements in a declaration that are not expressly denied in the answer shall be deemed admitted.

§ 20402. Evaluation of the Declaration and Answer

(a) The Board shall dismiss any declaration that fails to include all of the requirements of section 20400, subdivision (a) or (b), as applicable. A declaration dismissed under this regulation shall not be included in the total of seventy-five (75) declarations permitted under Labor Code section 1164.12

(b) If no answer to the declaration is timely filed, or if the answer admits the truth of all factual prerequisites to the validity of the declaration, the Board shall immediately issue an order directing the parties to mandatory mediation and conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

(c) Where a timely filed answer disputes the existence of any of the prerequisites for referral to mediation, the Board shall attempt to resolve the dispute on the basis of the parties' filing and/or upon investigation. The Board shall issue a decision within 5 days of receipt of the answer either (1) dismissing the petition, or (2) referring the matter to mediation, or (3) scheduling an expedited evidentiary hearing to resolve any factual issues material to the question of the existence of any of the prerequisites.

(d) Where an evidentiary hearing is ordered by the Board pursuant to subdivision (c) above, the hearing shall be in accordance with the following procedures:

(1) Notice of hearing shall be served in the manner required by Section 20164.

(2) Parties shall have the right to appear in person at the hearing, or by counsel or other representative, to call, examine and cross-examine witnesses, and to introduce all relevant and material evidence. All testimony shall be given under oath.

(3) The hearings shall be reported by any appropriate means designated by the Board.

(4) The hearing shall be conducted by a member(s) of the Board, or by an assigned Administrative Law Judge, under the rules of evidence, so far as practicable; while conducting a hearing the Board member(s) or Administrative Law Judges shall have all pertinent powers specified in Section 20262.

(5) Requests for discovery and the issuance and enforcement of subpoenas shall be governed by the provisions of section 20406 of these regulations, with the exception that references to "notice of mediation" shall mean notice of hearing, "mediator" shall mean the Board member(s) or assigned Administrative Law Judges who will conduct the hearing, references to "mediation" shall mean the expedited evidentiary hearing provided for in this section.

(6) The assigned Administrative Law Judge or member(s) of Board who conducted the hearing shall file a decision with the Executive Secretary within ten (10) days from receipt of all the transcripts or records of the proceedings. The decision shall contain findings of fact adequate to support any conclusions of law necessary to decide the matter. If the hearing was conducted by the full Board, the decision shall constitute that of the Board.

(A) Upon the filing of the decision, the Executive Secretary shall serve copies of the decision on all parties pursuant to section 20164.

(B) Within ten (10) days after the service of the decision of the Administrative Law Judge, or of less than the full Board, any party may file with the Executive Secretary for submission to the Board the original and six (6) copies of exceptions to the decision or any part of the proceedings, with an original and six (6) copies of a brief in support of the exceptions, accompanied by proof of service, as provided in sections 20160 and 20168. The exceptions shall state the ground of each exception, identify by page number that part of the decision to which exception is taken, and cite to those portions of the record that support the exception. Briefs in support of exceptions shall conform in all ways to the requirements of sections 20282(a)(2). The Board shall issue its decision within 10 days of receipt of the exceptions.

(7) Upon its resolution of the disputed facts, the Board either shall issue an order dismissing the declaration or an order directing the parties to mandatory mediation and

conciliation and request a list of mediators from the California State Mediation and Conciliation Service, in accordance with Labor Code section 1164, subdivision (b).

§20403. Selection of Mediator

Within seven (7) days of the receipt of the list of nine mediators, the parties shall either select a mediator from the list in accordance with Labor Code section 1164, subdivision (b), or mutually designate a mediator from a list of all qualified mediators maintained by the State Mediation and Conciliation Service.

§20404. Disqualification of Mediator

(a) Any mediator selected pursuant to Labor Code section 1164, subdivision (b), shall be subject to disqualification for bias, prejudice, or interest in the outcome of the proceeding.

(b) Whenever a mediator shall have knowledge of any fact, which by reason of bias or prejudice makes it appear probable that a fair and impartial mediation, within the meaning of Labor Code section 1164, et seq., cannot be held before him or her, it shall be his or her duty to immediately notify the Executive Secretary, setting forth all reasons for his or her belief.

(c) Prior to the first mediation session, any party may request the mediator disqualify himself or herself whenever it appears probable that a fair and impartial mediation cannot be held by the selected mediator. The request shall be under oath and shall specifically set forth all facts constituting the grounds for the disqualification of the mediator.

(1) If the mediator admits his or her disqualification, such admission shall be immediately communicated to the Executive Secretary, who shall refer the matter to the State Mediation and Conciliation Service for selection of another mediator in accordance with section 20403.

(2) If the mediator does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule in writing or on the record, state the grounds for the ruling, and proceed with the mediation. The party requesting the disqualification may, upon issuance of the mediator's report, file for review of the mediator's report on the grounds set forth in Labor Code section 1164.3, subdivision (e), and in accordance with section 20408 of these regulations.

§20405. Notice of Mediation

The mediator shall appoint a time and place for the mediation and cause notice thereof to be served personally or by registered or certified mail on the parties to the mediation not less than fifteen (15) days before the mediation. The mediation shall commence within thirty (30) days of the selection of the mediator, or as soon as practical. Appearance at the mediation shall waive the right to notice.

§20406. Discovery

(a) Witness and Document Lists. Either party shall within fifteen (15) days of receipt of a Board order directing the parties to mandatory mediation and conciliation have the right to demand in writing, served personally or by registered or certified mail, that the other party provide a list of witnesses it intends to call designating which witnesses will be called as expert witnesses and a list of documents it intends to introduce on the record at the mediation. A copy of the demand shall be served on the mediator.

(1) Witness and document lists shall be served personally or by registered or certified mail on the requesting party within ten (10) days of service of the request. Copies of the lists shall be served on the mediator.

(2) Listed documents shall be made available for inspection and copying at reasonable times prior to the hearing.

(3) Time limits provided herein may be waived by mutual agreement of the parties if approved by the mediator.

(4) The failure to list a witness or a document shall not bar the testimony of an unlisted witness or the introduction of an undesignated document at the mediation, provided that good cause is shown, as determined by the mediator. The introduction of bona fide rebuttal evidence shall constitute good cause.

(b) Subpoenas. After the appointment of a mediator, and prior to the commencement of mediation, any member of the Board, or the Executive Secretary, or any person authorized by the Board, shall upon the ex parte request of a party to a mediation, issue subpoenas requiring the attendance and testimony of witnesses and or the production of any materials, including, but not limited to, books, records, correspondence or documents in their possession or under their control. Requests for subpoenas at or after the first mediation session shall be made to the mediator.

(1) The subpoena shall show on its face the name, address, and telephone number of the party at whose request the subpoena was issued. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum showing good cause for

the production of the matters or things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues tendered by the party and stating that the party or witness has the desired matters or materials in his or her possession or under his or her control. Information concerning the financial condition of the employer and its ability to meet the costs of the contract shall not be discoverable except where the employer makes a plea of inability to meet the union's wage and benefit demands; however, other financial information may be discoverable if necessary to verify or evaluate a party's claims or proposals.

(2) Service of subpoenas shall be made personally or by registered or certified mail. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(3) Any person on whom a subpoena is served who does not intend to comply shall, within 5 days, after the date of service, petition the mediator in writing to revoke the subpoena. The petition shall be sent to the mediator by registered or certified mail and served by the same means upon the party requesting the subpoena. The petition to revoke shall explain with particularity the grounds for objecting to each item covered by the petition, which shall include a copy of the subpoena. The mediator shall have the discretion, where good cause is shown, to modify the time requirements regarding subpoenas and subpoena compliance.

(4) The mediator shall revoke the subpoena in whole or in part if the evidence required to be produced does not relate to any matter in question or does not describe with sufficient particularity the evidence required to be produced or the testimony or records sought are privileged or otherwise protected or if the subpoena is otherwise invalid.

(5) The mediator shall rule on all petitions to revoke. Upon the failure of any person to comply with a ruling by the mediator enforcing a subpoena, the mediator may request the Board apply for a court order enforcing the subpoena.

(c) In addition to the limitations set forth above, discovery requests shall be considered untimely if submitted prior to the identification of issues required by section 20407, subdivision (a)(1).

(d) Enforcement of Discovery. For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify, the mediator may draw adverse inferences or impose terms, conditions, or sanctions upon a party. For the purposes of this section , "party" shall be deemed to include the officers, directors, agents, and employees of such party. The files, books, and records of each officer, director, agent, or employee shall be deemed to be in the possession and control of, and capable of production by, such party.

§20407. The Mediation and Conciliation Process

(a) Mediation shall proceed in accordance with Labor Code section 1164, subdivisions (b), (c), and (d). The 30-day periods referred to in Labor Code section 1164, subdivision (c) shall commence on the date of the first scheduled mediation session, shall proceed for consecutive calendar days, and shall not include any pre-mediation conference. The 30-day timelines may be waived by mutual agreement of the parties and with the approval of the mediator. Pre-mediation conferences may be scheduled at the discretion of the mediator.

(1) No later than seven (7) days after receipt of a Board order directing the parties to mandatory mediation and conciliation, and prior to their first discovery requests pursuant to section 20406 above, each party shall identify for the mediator those issues that are in dispute and those that are not in dispute, identify the standards which they propose to resolve the disputed issues, and provide agreed upon contract language for those issues not in dispute. This information shall be served on the other party immediately and on the mediator upon his or her selection. During the mediation, the parties shall provide the mediator with a detailed rationale for each of its contract proposals on issues that are in dispute, and shall provide on the record supporting evidence to justify those proposals. The failure of any party to participate or cooperate in the mediation and conciliation process shall not prevent the mediator from filing a report with the Board that resolves all issues and establishes the final terms of a collective bargaining agreement, based on the presentation of the other party.

(2) The mediator shall preside at the mediation, shall rule on the admission and exclusion of evidence and on questions of procedure and shall exercise all powers relating to the conduct of the mediation. All evidence upon which the mediator relies in writing the report required by section 1164, subdivision (d) shall be preserved in an official record through the use of a court reporting service or, with the consent of both parties and the approval of the mediator, by a stipulated record. The mediator shall cite evidence in the record that supports his or her findings and conclusions. The mediator shall retain the discretion to go off the record at any time to clarify or resolve issues informally. All communications taking place off the record shall be subject to the limitations on admissibility and disclosure provided by Evidence Code section 1119, subdivisions (a) and (c), and shall not be the basis for any findings and conclusions in the mediator's report.

(3) The parties shall have the right to be represented by counsel or other representative.

(4) The parties to the mediation are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. The testimony of witnesses shall be given under oath.

(b) In determining the issues in dispute, the mediator may consider those factors

commonly applied in similar proceedings, such as, but not limited to:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer makes a plea of inability to meet the union's wage and benefit demands.

(3) Comparison of corresponding wages, benefits, and terms and conditions of employment in collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) Comparison of corresponding wages, benefits, and terms and conditions of employment in comparable firms or industries in geographical areas with similar economic conditions, considering the size of the employer, the skills, experience, and training required of the employees, as well as the difficulty and nature of the work.

(5) The average consumer prices for goods and services, commonly known as the Consumer Price Index, and the overall cost of living in the area where the work is performed.

(c) The mediator shall issue his or her report within twenty-one (21) days of the last mediation session. Upon completion of the mediator's report, the report shall be served on the parties and filed with the Board in accordance with sections 20164 and 20168. Upon the filing of the report, the mediator also shall transfer the official record of the proceeding to the Board.

§20408. Board Review of the Mediator's Report

(a) Within seven (7) days of the filing of first or second report by the mediator, either party may file a petition for review of the report. The petition shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The petition shall be based on any one or more of the grounds set forth in Labor Code section 1164.3, subdivision (a) or subdivision (e). The petitioning party shall specify the particular provisions of the mediator's report for which it is seeking review, shall specify the specific grounds authorizing review, and shall cite the portions of the record that support the petition. In the event the petition is based on the grounds set forth in Labor Code section 1164.3, subdivision (e), the petitioning party may attach declarations that describe pertinent events that took place off the record, if necessary to establish the grounds for review stated in the petition.

(b) The Board shall issue a decision on the petition in accordance with Labor Code section 1164.3. Where the petition is based on the grounds specified in Labor Code section 1164.3, subdivision (e), and the Board determines that there are material facts in dispute that are outside the official record of the mediation, the Board may order an expedited evidentiary hearing to resolve the dispute, to be conducted in accordance with the procedures set forth in

section 20402 of these regulations.

(c) Where the Board orders additional mediation pursuant to Labor Code section 1164.3, subdivision (c), the mediation shall commence within thirty (30) days of the issuance of the Board's order, or as soon as practical.

Chapter 4.5. Submission Of Collective Bargaining Agreements

§20450. Submission of Copies of Collective Bargaining Agreements to the Board

In order to facilitate the calculation of bargaining makewhole awards pursuant to Labor Code section 1160.3 and the administration of the Mandatory Mediation and Conciliation process provided in Labor Code sections 1164 through 1164.14, certified labor organizations and agricultural employers shall submit to the Board a copy of the full text of any collective bargaining agreements to which they have agreed, where the effective date of the agreement is on or after the effective date of this regulation.

Chapter 5. Certification and Signature of Documents

§20500. Certification of Papers and Documents.

The executive secretary of the Board or, in the event of his or her absence or disability, whosoever may be designated by the Board in his or her place and stead shall certify as may be necessary or desirable from time to time copies of all papers and documents which are a part of any of the files or records of the Board.

§20510. Signature of Orders.

The executive secretary or an associate executive secretary or, in the event of their absence or disability, whosoever may be designated by the Board in their place and stead, is hereby authorized to sign all orders of the Board.

Chapter 6. Availability of Board Materials and Documents

§20600. Board Materials and Formal Documents Available for Public Inspection and Copying; Requests for Identifiable Records; Files and Records Not Subject to Inspection; Fees for Copying and Production.

(a) The following materials are available to the public for inspection and copying during normal business hours at the Board's offices in Sacramento, California:

(1) All final opinions and orders made by the Board in the adjudication of cases;

(2) A record of the final votes of each member of the Board in every agency proceeding;

(3) Opinions and orders made by regional directors in the adjudication of representation cases pursuant to the delegation of authority from the Board under Chapter 5 of the Act;

(4) Copies of forms prescribed by the Board for the filing of charges under Chapter 6 of the Act or petitions under Chapter 5 of the Act;

(5) The formal documents constituting the record in a case or proceeding which are matters of official record, until destroyed pursuant to applicable statutory authority.

(b) A copy of a specific and identified final opinion and order of the Board in the adjudication of a case which has not as yet been included in a published volume offered for sale, may be obtained upon request made to the executive secretary in Sacramento, California. A copy of a specific and identified opinion and order of a regional director in the adjudication of a representation case may be obtained upon request made to the regional office where the opinion and order were issued.

(c) Requests for the inspection and copying of identifiable records other than those specified in subsections (a) and (b) above, which constitute public records under the California Public Records Act (Gov. Code Section 6250 and following) shall be made to the Board through its executive secretary or to the general counsel, as may be appropriate, in Sacramento, California. Such a request must be in writing and must provide a sufficiently specific description of the record to permit its identification and location.

The applicant shall be informed of the time and place at which the record will be made available. Should the Board or the general counsel determine that the request not be granted, prompt notice of the determination shall be given the applicant, accompanied by a written statement of the reasons for the denial.

(d) Subject to the provisions of section 20250, all files, documents, reports, memoranda, and records of the agency falling within the exemptions specified in Gov. Code Section 6250, and following shall not be made available for inspection or copying, unless specifically permitted by the Board, its chairman, or its general counsel.

(e) Copies of materials available under subsections (a) and (b) of this section or specifically made available under subsection (c) of this section, except for those materials otherwise published and offered for sale, shall be supplied upon request and the payment of reasonable fees for copying as set by the chief administrative judge of the Agricultural Labor Relations Board.

(f) In the event that the location and production of materials requested by an applicant for his inspection and copying, or for copying by the agency, involve significant cost to the agency, the applicant shall be informed in advance that he will be required to provide reimbursement for the reasonable direct and indirect costs incurred by the agency in such location and production.

Chapter 7. Prohibited Communications

§20700. Prohibited Communications.

Parties to an action before the Board may not communicate with employees of the Board about the disposition of the action while the action is pending before the Board. No person, even though not a party, may volunteer a communication which may be expected to affect the interest of a party in a case, whether or not the person acts with the knowledge or consent of a party. No person shall solicit another person to make a communication prohibited by these rules.

§20720. Definitions.

(a) Parties. Parties include the participants in elections and the parties of record in an unfair labor practice case, including the general counsel.

(b) Board employees. Board employees include, in all actions, members of the Board and their staffs and the executive secretary and his or her staff, including investigative hearing examiners and administrative law judges.

(c) Action. An action is

(1) objections to an election under Labor Code Section 1156.3(c);

(2) post-election challenge ballot proceedings;

(3) unfair labor practice proceedings, including injunctive proceedings;

(4) a proceeding under section 20382; or

(5) a petition under section 20385.

(d) Pending. Actions are pending as follows:

(1) a petition on objections to an election is pending from the time it is filed until the election is certified or until the petition is dismissed or until the election is overturned;

(2) a post-election challenge ballot proceeding is pending from the time of the issuance of the regional director's report on challenged ballots until the Board issues an order determining the challenges;

(3) an unfair labor practice case is pending from the time the complaint is issued until the time the Board makes a final order;

(4) a proceeding under section 20382 is pending from the time the petition is filed until it is granted or denied by the Board; and

(5) a petition under section 20385 is pending from the time the regional director completes his or her investigation until the Board makes a final determination.

§20740. Communications Not Prohibited.

Prohibited communications under section 20700 shall not include:

(a) Written communications of the type described in section 20700 if copies of them are contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of section 20166 and following;

(b) Oral communications of the type described in section 20700 if advance notice of them is given by the communicator to all parties in the proceeding and adequate opportunity is afforded to all parties to be present;

(c) Oral or written communications which relate solely to matters which the investigative hearing examiner, regional director, administrative law judge, or member of the Board is authorized by law or Board rules to entertain or dispose of on an ex parte basis;

(d) Oral or written requests for information solely with respect to the status of a proceeding;

(e) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(f) Oral or written communications proposing settlement, or an agreement for disposition of any or all issues in the proceeding;

(g) Oral or written communications which concern matters of general significance to the field of labor management relations or administrative practice and which are not specifically related to pending proceedings; or

(h) Communications by or with the executive secretary and his or her staff pursuant to the executive secretary's investigation of election objections under section 20365(f) of these regulations.

§20750. Receipt of Prohibited Communications; Reporting Requirements.

(a) Any Board employee of the categories defined in section 20720(b) to whom a prohibited oral communication is attempted to be made shall refuse to listen to the

communication, inform the communicator of this rule, and advise him or her that if he or she has anything to say it should be said in writing with copies to the parties. Any such Board employee who receives a written communication which he or she has reason to believe is prohibited by this chapter shall promptly forward such communication to the office of the executive secretary if the proceeding is then pending before the Board or before an administrative law judge, or to the regional director involved if the proceeding is then pending before him or her. If the circumstances in which the prohibited communication was made are not apparent from the communication itself, a statement describing those circumstances shall also be submitted. The executive secretary or the regional director to whom such a communication is forwarded shall then place the communication in the public file maintained by the agency and shall serve copies of the communication on all other parties to the proceeding and attorneys of record for the parties. Within 10 days after the mailing of such copies, any party may file with the executive secretary or regional director serving the communication, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication.

(b) Upon appropriate motion to the regional director, or the administrative law judge, or the Board, before whom the proceeding is pending, under circumstances in which such presiding authority shall determine that the dictates of fairness so require, the prohibited communication and response thereto may be made part of the record of the proceeding, and provision made for any further action including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under section 20760.

§20760. Penalties and Enforcement.

(a) Upon notice and hearing, the Board may censure, suspend, or revoke the privilege of practice before the agency of any non-attorney who knowingly and willfully makes or solicits the making of a prohibited communication. However, before the Board institutes formal proceedings under this section, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven days from the date thereof, why it should not take such action. Attorneys who knowingly and willfully engage in conduct prohibited by this chapter shall be reported to the State Bar for disciplinary action.

(b) To the extent permitted by law, the Board may, under appropriate circumstances, deny or limit remedial measures otherwise available under the Act to any party who shall, directly or indirectly, knowingly and willfully make or solicit the making of a prohibited communication.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of any Board employee who knowingly and willfully violates the prohibitions and requirements of this chapter.

Chapter 8. Practice Before the Board

§20800. Practice Before the Board.

(a) Attorneys and other representatives of parties appearing before the Board or engaged in any hearing or proceeding institute pursuant to the Act shall not engage in disruptive or abusive conduct with respect to persons operating under authority delegated by this Board or any hearings convened pursuant to the authority conferred upon this Board. Such conduct during the course of any official proceedings including, but not limited to, pre-election conferences, conduct of elections, and any hearings under the Board's auspices shall be grounds for summary exclusion from the proceeding by the agent of the Board in charge of such proceeding.

(b) Aggravated misconduct, when engaged in by a non-attorney representative of a party during the course of any official proceedings including, but not limited to, pre-election conferences, conduct of elections, or any investigations or hearings conducted under the Board's auspices, shall be grounds for suspension or disbarment from practice before the Board after due notice is given and a hearing is held. Attorneys who engage in aggravated misconduct during any Board proceeding shall be reported to the State Bar for disciplinary action.

§20820. Practice Before the Board.

Renumbering of former section 20820 to section 20800 filed 9-20-91; operative 10-21-91 (Register 92, No. 4).

Chapter 9. Solicitation by Non-Employee Organizers

§20900. Solicitation by Non-Employee Organizers.

Labor Code Section 1140.2 declares it to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing.

(a) Agricultural employees have the right under Labor Code Section 1152 to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from any or all of such activities except to the extent that such right may be affected by a lawful agreement requiring membership in a labor organization as a condition of continued employment. Labor Code Section 1153(a) makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce agricultural employees in the exercise of these rights.

(b) The United States Supreme Court has found that organizational rights are not viable in a vacuum. Their effectiveness depends in some measure on the ability of employees to learn the advantages and disadvantages of organization from others. When alternative channels of

effective communication are not available to a union, organizational rights must include a limited right to approach employees on the property of the employer. Under such circumstances, both statutory and constitutional principles require that a reasonable and just accommodation be made between the right of unions to access and the legitimate property and business interests of the employer.

(c) Generally, unions seeking to organize agricultural employees do not have available alternative channels of effective communication. Alternative channels of effective communication which have been found adequate in industrial settings do not exist or are insufficient in the context of agricultural labor.

(d) The legislatively declared purpose of bringing certainty and a sense of fair play to a presently unstable and potentially volatile condition in the agricultural fields of California can best be served by the adoption of rules on access which provide clarity and predictability to all parties. Relegation of the issues to case-by-case adjudication or the adoption of an overly general rule would cause further uncertainty and instability and create delay in the final determination of elections.

(e) Accordingly the Board will consider the rights of employees under Labor Code Section 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purpose of meeting and talking with employees and soliciting their support, subject to the following regulations:

(1) When Available.

(A) Access under this section onto an agricultural employer's property shall be available to any one labor organization for no more than four (4) thirty-day periods in any calendar year.

(B) Each thirty-day period shall commence when the labor organization files in the appropriate regional office two (2) copies of a written notice of intention to take access onto the described property of an agricultural employer, together with proof of service of a copy of the written notice upon the employer in the manner set forth in section 20300(f).

If a petition for election is filed, the right of access shall continue until after the election as provided by section 20900(e)(1)(C). If a run-off or rerun election is directed, the right of access shall continue until after said election as provided in section 20900(e)(1)(C).

(C) The right to take access under this section terminates as to any labor organization after the fifth day following completion of the ballot count pursuant to section 20360(a) in an election conducted under Chapter 5 of the Act, except that where objections to the election are filed pursuant to Labor Code Section

1156.3(c), the right of access shall continue for ten days following service of and the filing of such objections. The right to take access under this section recommences 30 days prior to the expiration of the bars to the direction of an election set forth in Labor Code Sections 1156.5 and 1156.6, and 13 months prior to the expiration of a valid collective bargaining agreement that would otherwise bar the holding of an election but for the provisions of Labor Code Section 1156.7(d). Where the right to take access is recommenced during the pendency of a valid collective-bargaining agreement pursuant to this paragraph, no more than four thirty-day periods of access shall be permitted to any one labor organization in the 13 months preceding the expiration of said collective bargaining agreement.

Nothing herein shall be interpreted or applied to restrict or diminish whatever rights of access may accrue to a labor organization certified as a bargaining representative.

(2) Voluntary Agreements on Access. This regulation establishes the terms upon which a labor organization may take access. However, it does not preclude agreements by the parties to permit access on terms other than as set forth in this part, provided that any such agreement shall permit access on equal terms to any labor organization which agrees to abide by its terms. For the purpose of facilitating voluntary resolution by the parties of problems which may arise with access, the notice of intent to take access shall specify a person or persons who may reach agreements on behalf of the union with the employer concerning access to his/her property. The parties are encouraged to reach such agreements and may request the aid of the regional director and board agents in negotiating such agreements; however, no such attempts to reach an agreement, be they among the parties themselves or with the aid of this agency, shall be deemed grounds for delay in the taking of immediate access once a labor organization has filed its notice of intent to take access.

(3) Time and Place of Access.

(A) Organizers may enter the property of an employer for a total period of one hour before the start of work and one hour after the completion of work to meet and talk with employees in areas in which employees congregate before and after working. Such areas shall include buses provided by an employer or by a labor contractor in which employees ride to and from work, while such buses are parked at sites at which employees are picked up or delivered to work. Where employees board such buses more than one hour before the start of work, organizers may have access to such buses from the time when employees begin to board until such time as the bus departs.

(B) In addition, organizers may enter the employer's property for a single period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or

locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall encompass such lunch break. If there is no established lunch break, the one-hour period shall encompass the time when employees are actually taking their lunch break, whenever that occurs during the day.

(4) Numbers of Organizers; Identification; Prohibited Conduct.

(A) Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.

(B) Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge which clearly states his or her name, and the name of the organization which the organizer represents.

(C) The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery or interference with the process of boarding buses. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

(5) Violations of section 20900.

(A) Any organizer who violates the provisions of this part may be barred from exercising the right of access under this part in any one or more of the four geographical areas currently designated by the Board as regions, for an appropriate period of time to be determined by the Board after due notice and hearing.

Any labor organization or division thereof whose organizers repeatedly violate the provisions of this part may be barred from exercising the right of access under this part in any one or more of the four geographical areas currently designated by the Board as regions, for an appropriate period of time to be determined by the Board after due notice and hearing.

(B) Violation by a labor organizer or organization of the access regulation may constitute an unfair labor practice in violation of Labor Code Section 1154(a)(1) if it independently constitutes restraint and coercion of employees in the exercise of their rights under Labor Code Section 1152.

Violations by a labor organizer or organization of this part may constitute grounds for setting aside an election where the Board determines in objections

proceedings under Section 1156.3(c) of the Act that such conduct affected the results of the election.

(C) Interference by an employer with a labor organization's right of access under this part may constitute grounds for setting aside an election where the Board determines in proceedings under Section 1156.3(c) of the Act that such conduct affected the results of the election. Furthermore, such interference may constitute an unfair labor practice in violation of Labor Code Section 1153(a) if it independently constitutes interference with, restraint, or coercion of employees in the exercise of their rights under Labor Code Section 1152.

(6) Citrus Industry.

(A) For purposes of this subsection the term "employer" refers to any "agricultural employer" involved in the growing, harvesting or packing of citrus.

(B) The service of a Notice of Intent to Take Access or Notice of Intent to Organize upon such an employer and the proper filing of such Notice upon the appropriate regional office by a labor organization shall be deemed sufficient under section 20900(e)(1) to permit the labor organization to take access, as provided in this section, to the employees employed at groves and orchards of citrus fruit which the employer grows, harvests or packs.

(C) Any labor organization which has duly filed a Notice of Intent to Take Access or Notice of Intent to Organize concerning the employer may request, in writing, from the regional director a copy of the following information required to be made available pursuant to section 20915(b): the written list of the name(s) of the owner(s)/lessee(s) and the location of each citrus grove or orchard of citrus fruit which the employer grows, harvests, or packs. If, after investigation, the regional director determines that some or all of the owner(s)/lessee(s) of the citrus groves or orchards of citrus fruit which the employer grows, harvests, or packs, are part of the bargaining unit, then, pursuant to the labor organization's request, the regional director shall provide to the labor organization(s) a list containing the names of the owner(s)/lessee(s) and the location of each grove or orchard that is included within the bargaining unit. The regional director will immediately notify the owner(s)/lessee(s) of said citrus groves or orchards in writing of the fact that a Notice of Intent to Take Access or Notice of Intent to Organize has been filed and that union organizers may take access to the grove or orchard.

(D) Upon the proper filing and service of a Notice of Intent to

Take Access or Notice of Intent to Organize, the employer and the union, with the assistance of the regional director, shall establish the means whereby the employer will keep the union informed of the places and times at which the employer's crews may be found during the relevant access taking or organizing period. For purposes of this provision, crews consisting of three (3) or fewer workers may be excluded, if the employer has no knowledge of the specific locations in which such crews will be working during the day. As to such crews, the employer will provide the union with as specific a description as possible of the area in which such employees will be working. Should the employer and the union fail to establish a mutually agreeable plan for providing the union with the aforesaid information, the following procedures shall be observed:

(1) The employer shall on a day-by-day basis during the access period prepare a schedule showing the place and time where each crew will be working, including the time each crew will begin work, take its lunch break, and end work each day and directions to the location(s) where each crew will be working. Said schedule shall be posted at least two hours in advance of the start of work on each day during the access period. Posting shall occur at the location from which the employer dispatches its crews, and the employer will advise the union of that location. The union's representatives shall be afforded reasonable access to the place where the employer posts the schedules.

(2) Should the union desire to take access on any given day during the access period, it shall so notify the employer in advance of the taking of access and provide a phone number at which it may be contacted pursuant to subsection (3) below.

(3) Once posting has occurred, the employer may find it necessary to change the time or place at which a crew will be working. In that event, the employer shall make reasonable efforts to notify the union of the new time or location.

§20901. Limitation for Special Segments of Agriculture.

(a) Dairy, Poultry and Egg Segments of Agriculture: We find that certain conditions exist in the dairy, poultry and egg segments of agriculture which set them apart from all other elements of the industry. These conditions include: (1) the possible transmission of animal disease, (2) possible product contamination, and (3) possible animal stress. Because of these combined conditions, we deem non-employee access into the following limited areas to be prohibited:

(1) Dairy Industry: The milk barn and the milk house.

(2) Poultry and Egg Industry:

(A) Hatcheries: Those covered and enclosed areas of the farm in which the eggs are handled and incubated, and in which the chicks and poults are maintained.

(B) Poultry Production: Those covered or enclosed areas of the farm in which the poultry is housed or otherwise maintained.

(C) Egg Production: Those covered or enclosed areas of the farm in which the hens are housed or otherwise maintained.

The employer shall clearly mark and post areas of prohibited access, consistent with the above prohibitions.

To the extent that employees are permitted to remain in the prohibited areas established herein during their lunch period or during the period of one hour before the start of work and one hour after the completion of work as provided in section 20900(e)(3), the employer shall be deemed to have waived the special limitations of this section and shall not prohibit access thereto.

(b) Nursery and Floral Segments of Agriculture: We find that certain conditions exist in that segment of the nursery industry that uses predominantly covered growing areas that set it apart from all other forms of agriculture. These conditions include: (1) the covering of the growing area itself, (2) the constant danger of spread of disease, (3) the need for temperature control, (4) the costly and complicated mechanism needed to supply the temperature control, (5) the high degree of vulnerability of this mechanism, (6) the sophisticated and equally vulnerable fertilizer and watering systems and (7) the frequent indoor spraying of lethal insecticides. Because of these combined conditions, we deem non-employee access into all covered growing areas (be they covered by glass, plastic or wooden lath), and entry into any propagation areas housed in any other permanent structures, as well as entry into those structures that house nursery fertilizer and watering systems and temperature control systems to be prohibited.

The employer shall clearly mark and post areas of prohibited access, consistent with the above prohibitions. To the extent that employees are permitted to remain in the prohibited areas during their lunch break, or during the hour before or after work, the employer shall be deemed to have waived the special limitations in this section and shall permit access thereto pursuant to the provisions of section 20900(e)(3).

Because the combined conditions set forth above are not applicable to the so-called bare root industry, which includes the growing of roses, deciduous fruit, nut and shade trees, we deem it unnecessary to make any modifications with respect to it.

In those nurseries that grow products in covered areas as well as in open fields, e.g., the bare root industry, the limits set forth above will apply only to the covered growing areas.

§ 20910. Pre-Petition Employee Lists.

(a) Any labor organization that has filed within the past 30 days a valid notice of intent to take access as provided in section 20900(e)(1)(B) on a designated employer may file with the appropriate regional office of the Board two (2) copies of a written notice of intention to organize the agricultural employees of the same employer, accompanied by proof of service of the notice upon the employer in the manner set forth in section 20300(f). The notice must be signed by or accompanied by authorization cards signed by at least ten percent (10%) of the current employees of the designated employer. The signatures and authorization cards must comply with the requirements set forth in section 20300, subdivision (j)(l).

(b) A notice of intention to organize shall be deemed filed upon its receipt in the appropriate regional office accompanied by proof of service of the notice upon the employer. As soon as possible upon the filing of the notice of intention to organize, the regional office in which the petition is filed shall telephone or telegraph the employer to inform him or her of the date and time of the filing of the notice.

(c) Within five days from the date of filing of the notice of intention to organize, the employer shall submit to the regional office an employee list as defined in section 20310(a)(2). If the employer contends that the unit named in the notice is inappropriate, it shall submit its arguments to the regional director in writing. A contention that the unit named is inappropriate shall not excuse the timely submission of the pre-petition employee list in the unit named in the notice.

(d) Upon receipt of the list, the regional director shall determine if the ten percent showing of interest requirement has been satisfied, and, if so, shall make available a copy of the employee list to the filing labor organization. The same list shall be made available to any other labor organization which within 30 days of the original filing date files a notice of intention to organize the agricultural employees of the same employer.

(e) No employer shall be required to provide more than one employee list pursuant to this section within any 30-day period.

§20915. Pre-Petition Investigation of Election Related Issues.

(a) The regional director may cause an investigation of any issues raised in connection with a Notice of Intention to Take Access or a Notice of Intention to Organize which might affect any subsequent election at the employer, including, but not limited to, questions of appropriate unit, identity of the employer, supervisorial or other non-employee status of persons included in or excluded from a pre-petition list, the appropriate designation of the immediately

preceding payroll period, and employer compliance with Labor Code Section 1157.3.

(b) If a Notice of Intent to Take Access or Notice of Intent to Organize is served upon a packer, custom harvester, harvesting association, cooperative, hiring association, any person, or association of persons or cooperatives involved in the growing, harvesting or packing of citrus, that entity or person shall, within 72 hours following service of the Notice of Intent to Take Access or Notice of Intent to Organize, make available for inspection and copying by the regional director a written list showing the name(s) of the owner(s)/lessee(s) and the location of each citrus grove or orchard of citrus fruit which the entity or person grows, harvests, or packs. Additionally, if the appropriate bargaining unit and/or the identity of the employer remain unresolved, and the regional director so requests, the entity or person shall, at the same time, make available for inspection and copying by the regional director a copy of those portions of the following documents which are relevant to the resolution by the regional director of bargaining unit and employer identity issues: articles of incorporation and by-laws, if the entity is a corporation; association agreements, partnership agreements, and membership agreements, if any, which it has entered into with citrus growers who are members or providers of citrus fruit; and contracts and harvesting agreements which it has entered into with customers, clients, or other providers of citrus fruit. In cases where a Notice of Intent to Take Access and/or Notice of Intent to Organize is accompanied by a Petition for Certification, the above documents and information shall be made available to the regional director within 24 hours. Except for that information authorized to be disclosed pursuant to section 20900(e)(6)(C), all other information provided to the regional director as herein required, shall be kept by the regional director in confidence, and shall not be disclosed to any party without prior written approval of the entity or person.

(c) Should an entity or person engaged in the growing, harvesting, or packing of citrus, upon whom a Notice of Intent to Take Access or Notice of Intent to Organize has been duly served and from whom the regional director has requested the information described in (b) of this section, refuse to provide all or a portion of such information, the Board may, at the request of the regional director, issue an investigative subpoena. The Board shall enforce the subpoena pursuant to the requirements of section 20217(b)-(g). However, for purposes of this regulation, the term "regional director" shall be substituted for the terms "general counsel" or "general counsel or his or her agent(s) who has issued the subpoena," and the term "entity or person" shall be substituted for the term "respondent," wherever they appear in section 20217(b)-(g).

Chapter 10. Symbols or Emblems

§21000. Symbols or Emblems.

If any labor organization has a distinctive symbol or emblem which it desires to have appear on ballots during elections as a supplement to its name identification, it may record such symbol or emblem by filing appropriate copies with the Executive Secretary in Sacramento.

The symbol or emblem designating a choice of "No Labor Organization" should be a circle with a diagonal slash from upper left to lower right through it, with the word "No" centered in the circle, as a supplement to the words "No Union" on the ballot. The reproduction of the symbol or emblem on the ballot shall not be in excess of one-inch square.

If for mechanical reasons, the Board cannot place the symbol or emblem on he ballot, it will attempt to trace the outline of the symbol or emblem on the ballot.

Each labor organization will be permitted to register only one such symbol or emblem for all its constituent locals, divisions, or subdivisions.

§21100. Definition of Unforeseen Emergency Condition Pursuant to Government Code Section 11125(a).

Repealed.

Chapter 12. Conflict of Interest Code

§21200. General Provisions.

The Political Reform Act, Government Code sections 81000, *et seq*., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Agricultural Labor Relations Board.

Designated employees shall file statements of economic interests with the Agricultural Labor Relations Board. Upon receipt of the statements of Board Members and the Executive Secretary, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements of all other designated employees shall be retained at the offices of the Agricultural Labor Relations Board which shall make the statements available for public inspection and reproduction. (Gov. Code § 81008.)

Appendix A

Designated Employees	*Disclosure Categories*
The Chairman and All Board Members	1,2,3
Board Counsel	1,2,3
Senior Board Counsel	1,2,3
The Executive Secretary	1,2,3
The Deputy Executive Secretary	1,2,3
Chief Administrative Law Judge	1,2,3
Administrative Law Judges	1
Hearing Site Clerk	3-
The General Counsel	1,2,3
The Deputy General Counsel	1,2,3
Assistant General Counsel	1
Legal Counsel	1
Staff Counsel III	1
Field Examiners	1
Regional Directors	1,2,3
Chief of Administration	2,3–
Fiscal Officer	2,3
Staff Services Manager	2–
Business Services Officer	2,3
Accounting Officer	2,3
Consultants	*

Disclosure Categories

1. *Designated employees in Category 1 must report:*

(a) All investments and business positions in, and income, including gifts, loans and travel payments, from any business entity which does business in agriculture or is an agricultural employer, farm labor contractor, labor organization or representative;

(b) Interests in real property which, during the past two years, have been used in agriculture or agricultural activity, or which foreseeably may be so used.

2. *Designated employees in Category 2 must repor*t:

(a) Investments and business positions in, and income, including gifts, loans and travel payments, from any business entity of the type that has contracted, within the last two (2) years, with the Agricultural Labor Relations Board to provide services, supplies,

materials, machinery or equipment to the Board.

3. *Designated employees in Category 3 must report*:

(a) Investments and business positions in, and income, including gifts, loans and travel payments, from any business entity which is of the type that has arranged within the last two (2) years to provide premises for lease, rental, or sale to the Agricultural Labor Relations Board or the State of California on behalf of the Board;

(b) Interests in real property located in California which have been arranged for by the Agricultural Labor Relations Board or the State of California on behalf of the Board as premises, such as office or storage space, hearing rooms, etc. The designated employee is required to report such interest in real property if it is foreseeable that said property may be the subject of such an arrangement, lease, rental, or sale.

* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The Executive Secretary may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based on that description, a statement of the extent of the disclosure requirements. The Executive Secretary's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Definitions

"Agricultural employer" as defined by Labor Code Section 1140.4 (c) means any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes.

"Agriculture" or *"In agriculture"* as defined by Labor Code Section 1140.4 (a) means farming in all its branches, and among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined in any agricultural commodities in Section 1141j (g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming

operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. The definition of Section 1140.4 (a) of the Labor Code is hereby incorporated by reference into this Code.

"Doing Business in Agriculture." Any business or source of income that engages in the processing and/or distribution of agricultural or food products, or the manufacture or sale of farm equipment or farm supplies; or whose primary course of activity is the transportation of agricultural products is deemed to be doing business in agriculture.

"Farm Labor Contractor" as defined by Labor Code Section 1682 (b) means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of any employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons, whether licensed or unlicensed.

"Labor Organization" as defined by Labor Code Section 1140.4(f).1 means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees.

"Representative" is any individual, group or organization which stands in the place of or represents the interests of any person or entity in agriculture, agricultural employer, farm labor contractor or labor organization. "Representative" shall include, but not be limited to business agents, labor relations personnel, legal representatives, or trade associations.